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Affirmative action and the New York City public school system.

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AFFIRMATIVE ACTION

AND THE NEW YORK CITY PUBLIC SCHOOL SYSTEM

A Dissertation Presented

by

Richard Harvey Smith

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ABSTRACT

AFFIRMATIVE ACTION

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The procedure under which teachers and supervisors are recruited, selected and promoted within the New York City public school system has been under attack by civil rights organizations, public administration specialists, reformers, the lay board and various other community and civic groups for over two decades. The principal charges have been that the selection procedures were too limited in scope, favored insiders and subtly discriminated against minority group members.

The study has two major purposes: first, to identify, examine and analyze those factors within the

New York City public school system's employment practices which are believed to contribute to the charges that the system discriminates against minorities in job selection and promotion, by effect if not intent. Secondly, to propose a model program of affirmative action for adoption by the New York City Board of Education. The primary objective of the proposed model plan is to serve as a guide to identify and eliminate all forms of discriminatory barriers encountered by minorities seeking employment and promotion within the school system.

The study also examines and analyzes those factors involved in establishing and implementing affirmative action requirements for the numerous contractors, vendors and suppliers who contract with the school system to provide goods and services.

The significance of the study rests with the fact that the New York City public school system alone, among the major urban school systems in the country, has not found a way to appreciably integrate Black and Hispanic teachers and supervisors. The failure is significant because New York City's school system,

educationally effective or not, has often been looked upon as a model for other urban school systems to follow. It has long been considered by some as a center of cosmopolitan values, progressive school politics, innovation and liberalism. Yet meaningful staff integration has not taken place.

There is sufficient evidence submitted in this study to support the claim of some that the school system's employment practices are, in effect, discriminatory. A review of the Board of Education's own ethnic survey of teaching, supervisory and administrative staff for 1973-74, disclosed lower percentages of Black and Hispanic professionals than in virtually any other urban school system in the country. The study also includes evidence which may lead some to conclude that the present employment system is not only discriminatory, but also outmoded, lacks validity, is unnecessarily cumbersome and rigid, and is inconsistent with the concepts of decentralization. In addition, the study gives some credence to the belief by many critics of the system that the current employment practices,

particularly the selection process, cannot be corrected except by wholesale reform. Such wholesale reform could be accomplished through the adoption of an effective affirmative action program suggested by the model plan submitted in this study.

The study is primarily a historical documentation of discrimination by consequence. It does not attempt to assess the motivation, but speaks to the consequences.

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CHAPTER I

EQUAL EMPLOYMENT OPPORTUNITY: ITS CONCEPT AND THEORY

Significance of Unequal Employment Opportunities for Minorities in America

The importance of employment in our society is historic. A person's job, which occupies approximately one-third of his or her daily life, is more than just a means of livelihood; it is a vital influence on one's existence even beyond working hours. Our social position, economic welfare, and even daily habits are all determined by the kind of job we hold.

In 1968, the Kerner Commission Report referred to the importance of meaningful employment in our society:

> Access to meaningful employment and the opportunity to advance in one's chosen career has traditionally been considered the test of participation in American Society. The ability to obtain and hold a steady job, paying an adequate salary, provides both purchasing power and social status. It develops capabilities, confidence and self-esteem an individual needs to be a responsible citizen and provide the basis for a stable family life.[1]

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[1] Otto Kerner et al., Report of the National Advisory Commission on Civil Disorders (New York: Bantam Books, 1968), p. 252.

Anne Roe in her book, The Psychology of Occupations, remarked that, "In our culture, social and economic status depend more upon the occupation than upon anything else."[2] Other prominent educators also support the contention that in our society, a good job gains one his or her self-identity, provides purchasing power and social status, and is generally the basis for a stable family life.[3]

For the vast majority of Black Americans, obtaining and holding a good job with an adequate salary is much more difficult than for most other Americans. The U.S. Bureau of the Census reported in July of 1974 that the gap that separates the median income of Black and white families has continued to widen. In 1973 the median income of a Black family of two adults and two children was 58 percent of the median income for the same size white family. Unemployment rates for Blacks are double the rate for whites in almost every category and reach as high as 40 percent in some cities for Black youths. In the area of employment, the

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[2]Anne Roe, The Psychology of Occupations, (New York: John Wiley & Sons, Inc., 1956), p. 33.

[3]G. Gilbert Wrenn, Man in a World at Work (Boston: Houghton Mifflin Co., 1964), p. 24; Donald E. Super, The Psychology of Careers, (New York: Harper Brothers, 1957), p. 35.

Bureau reported that, "During the 1963-73 decade, there occurred a greater degree of occupational upgrading among employed Negro . . . than among their white counterparts." The report concluded, "However, Negro . . . still lagged far behind whites in the proportion holding high-paying, high status jobs."[4] Thus, while Blacks were being hired in increasing numbers during the 1960's and early 1970's, labor statistics bore out the fact that mass unemployment and underemployment among Blacks remained. Economist Vivian Henderson alluded to this fact in testimony before the Kerner Commission in 1967 when he stated,

> No one can deny that all Negroes have benefited from civil rights laws. . . . The fact is, however, that the masses of Negroes have not experienced tangible benefits in a significant way. This is so in education and housing. It is critically so in the area of jobs and economic security. Expectations of Negro masses for equal job opportunity programs have fallen far short of fulfillment.[5]

Most educators, sociologists, economists and politicians as well as plain citizens believe that the key to employment success in this country is education. The fact

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[4]U.S. Bureau of the Census, The Social and Economic Status of the Black Population in the United States, 1972, Washington, D.C.: U.S. Government Printing Office, 1973.

[5]Otto Kerner et al., Report of the National Advisory Commission on Civil Disorders (New York: Bantam Books, 1968), p. 262.

is that employment discrimination based on race has created a situation in our society in which education is relatively unimportant in explaining the difference between white and Black incomes. Reports have shown that in many instances a white person with only an 8th grade education earns as much as a Black person with a high school diploma, and a white with only a high school diploma earns as much as a Black with a college degree. Stephan Michelson, in a study conducted in 1968 entitled "Income of Racial Minorities," reported,

> Educating non whites equal to whites did not prove effective in raising non white income. . . . Full employment at current education and wage levels also did not greatly affect relative incomes. Perhaps most surprisingly, equating the occupational distribution and years of school did not together close even one-fifth of (white-non white) income gap.[6]

The high rates of unemployment and underemployment in the racial ghettos of our major cities are evidence, in part, that many Black men living in these areas are seeking but cannot obtain jobs which will support a family. Equally important, most jobs they can obtain are considered "low status" jobs lacking status to sustain a worker's self-respect,

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[6] Stephan Michelson, "Income of Racial Minorities," Unpublished Manuscript, Washington, D.C.: Brooking Institute, 1968, p. 8.46.

or the respect of his family and circle of friends. In many instances the wives of these men are forced to work to make ends meet. In other instances these men leave their homes so that the family will be eligible for welfare relief. The culture of poverty that usually results from discrimination, unemployment, and underemployment among Blacks produces a ruthless, exploitative relationship within the ghetto. The results are high rates of crime, drug addiction, increased illegitimate births, prostitution, personal insecurity and tension.

Today, equal employment opportunity is the law of the land. It has been mandated by federal, state, and local legislation, presidential executive orders and definitive court decisions. Yet it seems clear that there is a need to go beyond the mere establishment of neutral "non-discriminatory" and "merit hiring" policies. If private firms, institutions and agencies are to be truly responsive to the spirit or intent of equal employment laws, positive action must be initiated on their part. One such positive response, with great hope for the future, is the implementation of equal employment opportunity programs requiring affirmative action.

Historical Overview of Equal Employment Opportunity: Executive and Legislative Initiatives

Equal employment opportunity has been defined by the Equal Employment Opportunity Commission (1971) as the right of all persons to be employed, to work and to advance on the basis of merit, ability and potential. This principle has deep roots in American society. But for many years this right has been severely restricted by discriminatory employment practices operating against the poor and minority groups in our society. Original actions to prohibit such by state fair employment laws and presidential orders in the 1940's and 1950's proved insufficient. Finally Congress provided federal legal enforcement for equal employment in Title VII of the Civil Rights Act of 1964 with strengthening amendments added through the Equal Employment Act of 1972.

Adoption of the Civil Rights Act of 1964, with its Title VII equal employment opportunity provisions, culminated a drive by civil rights organizations begun many years before. It was a drive that gained fruition first in the area of government employment and much later in the area of government contract employment.

But earlier efforts to enact federal legislation to deal with equal employment opportunity on a broad basis, some of which extended back to the 1940's, had all been stymied in Congress.

Government Employment

Until the New Deal period of the 1930's, action by the Federal Government relating to employment discrimination was largely confined to government employees. The Civil Service Act of 1883, for example, sought to establish the principle of "merit employment." One of the first regulations issued under the law, outlawed religious discrimination in federal employment.[7]

In 1940, a Civil Service rule forbade racial, as well as religious, discrimination in federal employment.[8] Then when Congress adopted the Ramspeck Act, expanding the coverage of the Civil Service Act and amending the Classification Act of 1923, the principle of "equal rights for all" in classified federal employment was established.

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[7] The Pendleton Act (Civil Service Act), 22 Stat. 403, 1883, 5 U.S.C. ch. 12, 1958; U.S. Civil Service Commission, Rule VIII, 1883.

[8] Executive Order 8587, 5 Fed. Reg. 445, 1940.

The Act declared:

> In carrying out the provisions of this Title, and the provisions of the Classification Act of 1923, as amended, there shall be no discrimination against any person, or with respect to the position held by any person, on account of race, creed, or color.[9]

New Deal Legislation

In the 1930's during the early New Deal period, a policy of equal opportunity in employment and training financed by federal funds was established by congressional and executive action. The policy extended not only to direct federal employment and employment by government contractors, but to employment and training opportunities provided by grant-in-aid programs as well.

The principle of equal job opportunity was enunciated by Congress in the Unemployment Act of 1933. It provided: "That in employing citizens for the purpose of this Act no discrimination shall be made on account of race, color, or creed."[10]

Many of the laws passed under the New Deal contained similar provisions. Regulations issued under the National

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[9] Ramspeck Act, 54 Stat. 1211, 1940, Title I, 5 U.S.C. sec. 631a, 1958.

[10] Unemployment Relief Act of 1933, 48 Stat. 22.

Industrial Recovery Act and the laws providing for public low-rent housing and defense housing programs, for example, forbade discrimination based on race, color or religion.[11]

Although these pronouncements amounted to unequivocal declaration by the legislative and executive branches, they were of limited effect in most instances. In practice, they amounted to little more than expressions of policy. There were no standards by which discrimination could be determined; and machinery and sanctions for enforcement were rare.

World War II and FEPC

The inclusion of non discrimination provisions in laws providing for federally-financed training programs continued after the outbreak of World War II. Despite these provisions, Black civil rights leaders rightly contended that Blacks were still being denied federally-financed training for defense jobs. A march on Washington was threatened, but not carried out.

On June 25, 1941, President Roosevelt issued Executive Order 8802 establishing a five-man Fair Employment

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[11]National Industrial Recovery Act of 1933, Title II, 48 Stat. 200; 44 C.F.R. sec. 265-33, 1938.

Practice Committee. The Committee was set up as an independent agency responsible solely to the President. The executive order declared the following to be the government's policy:

> To encourage full participation in the national defense program by all citizens of the United States, regardless of race, creed, color, or national origin, in the firm belief that the democratic way of life within the nation can be defended successfully only with the help and support of all groups within its borders.[12]

Broad in scope, the order applied to all defense contracts, to employment by the federal government, and to vocational and training programs administered by federal agencies. The FEPC was authorized to receive and investigate complaints of discrimination, to take "appropriate steps" to redress valid grievances, and to recommend to federal agencies and to the President whatever measures it deemed necessary and proper to carry out the purpose of the order.

The FEPC, nevertheless, had its weaknesses. It had a staff of only eight members, and it lacked direct enforcement powers. The later transfer of the FEPC to the War Manpower Commission deprived it of its autonomy. The

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[12]Executive Order 8802, 6 Fed. Reg. 3109, 1941.

Committee, in effect, suspended operations in early 1943.

Later in 1943, President Roosevelt issued Executive Order 9346 establishing a new FEPC.[13] A broader jurisdiction than that of its predecessor was given to the new FEPC. It extended to all employment by government contractors, recruitment and training for war production, and employment by the federal government. More important, its authority with regard to labor unions was extended to include discrimination in membership as well as in employment.

The second FEPC was much better staffed than its predecessor. Its budget permitted it to employ a staff of nearly 120 and to open 15 field offices. In its three years of existence, it processed approximately 8,000 complaints and conducted 30 public hearings. It still lacked power to enforce its decisions. Its authority expired at the end of 1946.

Government Contracts and the Truman Committee

From 1946 until 1964, the principal government efforts to eliminate racial and religious discrimination

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Executive Order 9346, 8 Fed. Reg. 7183, 1943.

in employment were in the area of government contracts. A major step was taken by President Harry Truman in 1951, when he issued a series of executive orders directing certain government agencies to include non discrimination clauses in their contracts.

On December 3, 1951, President Truman issued Executive Order 10308 creating the Committee on Government Contract Compliance. It was an eleven member group composed of representatives of industry, the public, and the five principal government contracting agencies.

After studying the effectiveness of the existing program, the Committee made more than twenty recommendations for improving the program. Many were aimed at the establishment of effective enforcement procedures for the non discrimination clause.

The Eisenhower Committee

On August 13, 1953, President Eisenhower issued Executive Order 10479, replacing the Truman Committee with the President's Committee on government contracts--a fifteen member group composed of representatives of industry, labor, government and the public.[14] Its duties were similar to the

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[14] Executive Order 10479, 18 Fed. Reg. 4899, 1953.

previous Committees. However, once again, the Committee had no power to enforce its recommendations.

The Kennedy Committee

The policy of non discrimination by government contractors was finally given teeth under the Kennedy Administration. In Executive Order 10925 issued on March 6, 1961, President Kennedy created a new President's Committee on Equal Employment Opportunity charged with the responsibility of effectuating equal employment opportunity both in government employment and in employment on government contracts.[15]

There was a dramatic break with the past under the new order. While earlier orders had imposed an obligation on contractors not to discriminate on the basis of race, creed, color or national origin, the Kennedy order also required the contractors to take affirmative action to make the policy effective, and included enforcement powers.

Program Broadened

Under Executive Order 1114 issued by President Kennedy on June 22, 1963, the non discrimination requirement

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[15]Executive Order 10925, 26 Fed. Reg. 1977, 1961.

was extended to all construction contracts paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the government pursuant to a grant, contract, loan, insurance, or guarantee. It was extended to contracts undertaken pursuant to any federal program involving such a grant, contract, loan insurance, or guarantee.

President Johnson

On February 13, 1964, President Johnson issued Executive Order 11141 declaring a federal policy under which federal supply contractors and subcontractors are forbidden (1) to discriminate because of age in hiring, promoting, or discharging employees, or in connection with working conditions or privileges, and (2) to specify an age limit in help-wanted ads. Both prohibitions are subject to a qualification permitting discrimination based on a bonafide occupational qualification, retirement plan, or statutory requirement.

Office of Federal Contract Compliance

Executive Order 11246 issued by President Johnson on September 24, 1965, transferred the function of the President's Committee to the Department of Labor.

Secretary of Labor Wirtz on October 5, 1965, issued Order No. 26-65 which established the Office of Federal Contract Compliance to carry out the responsibilities assigned to the Labor Department by the executive order. The executive order was amended on October 13, 1967, effective October 13, 1968, to add sex as a forbidden basis of discrimination.[16]

Legislative Background: The Creation of Title VII

Some of the first efforts of the federal government to legislate in the area of equal employment opportunity grew out of the World War II Fair Employment Practice Committees. The object was to give the Committees statutory status.

One of the first bills of this type was introduced in February 1943, by New York Congressman Vito Marcantonio. A bill to abolish the FEPC established by executive order was introduced by Congressman Robert Ramspeck of Georgia in December of the same year. Neither proposal was ever acted upon.

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[16]Executive Order 11246, 30 Fed. Reg. 12319, 1965; Executive Order 11375, 32 Fed. Reg. 14303, 1967.

In the period between 1943 and 1963, bills were introduced in each house of each Congress to regulate or at least to conciliate complaints involving alleged employment discrimination based on race, creed, color, religion, sex, age, or national origin. The bills varied widely as to coverage, administration, and enforcement.

For example, a bill introduced by Senator Robert Taft of Ohio in 1945, proposed to resolve disputes over such discrimination in employment by voluntary methods. The Dawson-Scanlon bill of 1954, on the other hand, proposed to establish an agency with authority and power of enforcement similar to those of the National Labor Relations Board. Up until 1964, only one bill was passed by either house. The bill that passed one house was that sponsored by Congressman Samuel K. McConnell, Jr. of Pennsylvania in 1950. This was a substitute bill for one introduced by Congressman Adam Clayton Powell of New York. The vote to substitute was 221 to 178; the substitute bill was then passed by a vote of 240 to 177. The McConnell bill would have set up a FEPC with power to study the matter of discrimination, to recommend procedures for elimination of such discrimination and to create employment opportunities for minorities without use of compulsion. The only

apparent power the FEPC would have had was that of subpoena to compel the attendance of a witness.

The Powell bill, on the other hand, provided for enforcement of orders based on findings of illegal discrimination. Congressman Powell called the McConnell bill "nothing but good advice." Although many other bills were introduced, none reached the floor of either house until the 88th Congress.

Kennedy Proposal

In a televised conference on June 11, 1963, President Kennedy announced that he would seek civil rights legislation in the 88th Congress. On June 19, he sent a draft proposal to Congress.

There then followed considerable maneuvering in Congress. The House Labor Committee gave tentative approval to H.R. 405, an equal employment opportunity bill providing for enforcement through suits in the federal district courts.

In the Senate, S. 1937 introduced by Senator Humphrey of Minnesota was approved by the Labor Committee. Under S. 1937, the administration and enforcement of the equal employment opportunity requirements were to be

handled by an Administrator in the Department of Labor. The Administrator was to prosecute complaints before an independent Equal Employment Opportunity Board. The Board was to issue cease-and-desist orders enforceable in the Federal Courts of Appeals.

House Committee Bill

Most important was H.R. 7152, which was reported with bipartisan support by the House Judiciary Committee. This bill was introduced by the Committee's Chairman, Congressman Cellar of New York, on June 20, 1963 as the Administration's omnibus civil-rights bill.

A subcommittee of the Judiciary Committee held twenty-two days of hearings on this bill and others. As reported by the House Judiciary Committee, H.R. 7125 was a broad civil rights measure. There were ten titles. The equal employment opportunity provisions were in Title VII.

The controversy over the method of enforcing the equal employment opportunity provisions was to be resolved as follows:

1. There would be a bipartisan Equal Employment Opportunity Commission without enforcement powers

2. Enforcement would be through suits brought by

the Commission or aggrieved persons in the federal district courts.

Approval by House

Following the assassination of President Kennedy, civil rights legislation was given a priority by President Johnson.

The House began debate on the bill on January 31, 1964. Before passing the bill on February 10, the House adopted eighteen amendments to Title VII. The most important amendment adopted was one which added sex as one forbidden basis of employment discrimination.

Action by the Senate

The House bill went directly to the floor of the Senate. However, the bill was amended eighty-seven times during the eighty-three day debate in the Senate, and the Dirksen-Mansfield substitute that finally was adopted made many changes, including some major ones in Titles VII and XI. On June 17, the Senate adopted the substitute bill by a vote of 76 to 18.

Final Approval

Upon return to the House, the House was asked

to vote on the acceptance of the measure as amended by the Senate. On July 2, 1964, after one hour of debate, the House adopted H.R. 7152 as amended by the Senate. The vote was 289 to 126. President Johnson signed the bill into law the same day. Thus, the Civil Rights Act of 1964 was born and Title VII was a reality.

Title VII

Traditionally, before Title VII, a charge of discrimination required proof that there was intent to discriminate or that members of one group were treated differently or unequally from members of another group. But Title VII forced new probing into the actual processes by which discrimination occurs, evolving out of court decisions on cases brought by EEOC as it carried out its mandate and by others asking the courts to interpret Title VII. In case upon case, the courts found that discrimination often occurs when there is neither intent nor unequal treatment. They found that discrimination may be the result of employment practices which have a "differential effect" on excluded groups protected by the law. In other words, discrimination was now to be defined in terms of consequence rather than motive.

The case which gave this view of discrimination its most comprehensive and articulate definition is Griggs v. Duke Power Co., decided by the Supreme Court in 1971. The Griggs Case is said to have laid down fundamental legal principles for pursuing employment discrimination in the same way that Brown v. Board of Education announced the principles regarding discrimination in education.

In final form Title VII of the Civil Rights Act of 1964 prohibited employment discrimination by all private employers with 25 or more employees, as well as by labor unions and employment agencies. In addition, it established the Equal Employment Opportunity Commission to administer the law's provisions and promote achievement of its goals. The formal tools, however, given to EEOC to carry out its mission were limited to lawsuits, brought by private parties or the Department of Justice. This restriction remained until 1972, at which time Title VII was amended under the Equal Employment Opportunity Act of 1972.

The Equal Employment Opportunity Act of 1972

Immediately after Congress adopted the Civil Rights Act of 1964, pressure began building to give the

Equal Employment Opportunity Commission the enforcement powers denied it by the compromise that cleared the way for the passage of the Act.

For several years, the principle proposals would have given the Commission authority to issue cease-and-desist orders enforceable in the federal courts of appeals. This authority is similar to that exercised by the National Labor Relations Board under the Taft-Hartley Act. These proposals regularly died in one or the other of the houses of Congress.

Finally there was a change in strategy. The Nixon Administration proposed a measure that did not include cease-and-desist powers. Instead, it provided for giving the EEOC the power, after it had exhausted efforts to conciliate a meritorious claim of discrimination, to file a civil action in Federal District Court and to represent the charging party in the action. The remedies included injunctions against further violations, plus reinstatement and back pay for victims of unlawful discrimination.

The House acted first in 1972, approving a measure early in the session. The Senate then approved a stronger bill after a petition for cloture had been adopted on February 22, 1972. The House-Senate conferees then agreed

to take the Senate bill. President Nixon signed the bill on March 24, 1972, and it became effective immediately.

The Changes in Coverage

By a series of amendments, the coverage of Title VII was extended to millions of employees and union members. The major changes were as follows:

1. The amendments reduced the number of employees and union members required from 25 to 15; prior to the amendments, Title VII applied only to employers with 25 or more employees and unions with 25 or more members

2. Under the original act, state and local governments and their employees were excluded from coverage. The amendments extended coverage to all state and local governments, governmental agencies, political subdivisions, and departments and agencies of the District of Columbia, but still excluded federal employees

3. The 1972 amendments expanded coverage to include discrimination in notices of advertising by joint labor-management committees that controlled apprenticeship or other training or retraining programs, including on-the-job training. The basic prohibition banned discrimination both in administering the program and in

admission to the program. Retaliation against persons seeking to enforce their rights was banned.

Changes in Exemptions

Under the 1964 Act, there was an exemption for educational institutions with respect to individuals whose work involved educational activities. The amendments eliminated this exemption.

This change brought under Title VII an estimated 120,000 educational institutions, with about 2.8 million teachers and professional staff members and another 1.5 million nonprofessional staff members. Also under the original act, there was an exemption for religious corporations, associations, or societies with respect to individuals whose work involved the religious aspects of the employing organization. The 1972 amendments broadened the exemption to include all activities of such organizations. It was noted, however, that the exemption permitted the organization to discriminate solely on the basis of religion. It could not discriminate on the basis of race, color, sex or national origin.

The amendments extending coverage to state and local governments and their employees provided an exemption

for elected officials, their personal assistants, and their immediate advisers.

Enforcement

The most fundamental changes made by the 1972 amendments related to enforcement. Under the 1972 amendments, if the EEOC is unable to obtain an acceptable conciliation agreement within thirty days after the filing of the charge or after the expiration of a state agency deferral period, the Commission may bring a civil suit in federal district court for an injunction and other remedies against the charged employer, union, employment agency, or joint labor-management committee. In cases involving a state or local government, the attorney general is authorized to bring the action.

State and Local Equal Opportunity Legislation

Beginning in the mid-1940's, a number of states adopted fair employment practice laws. New York was the first state to act in this area. It adopted an enforceable fair employment practice law in 1945. At the time Title VII of the federal civil rights act of 1964 was adopted, twenty-five states already had similar laws.

Also, several cities had enacted fair employment practice ordinances.

The state FEP laws could be divided into three groups:

1. Those that provided for an administrative hearing and judicial enforcement of orders of an administrative agency or official. Twenty-one states, including New York, had laws of this type in 1964.

2. Those that did not provide for any type of administrative agency or enforcement of orders but made employment discrimination a misdemeanor. Four states had laws of this type.

3. Those that were strictly voluntary and had no enforcement provisions. Three states had laws of this type.

The 1964 Federal Act made it clear that there was no intent to undercut or preempt these state laws. In fact, the provisions in the Federal Act for deferral to the procedures under state laws led to the adoption of several new state laws.

Where there is no State Law

Under the 1972 amendments, the following procedures apply where no state equal employment act exists:

1. A charge must be filed within 180 days after the occurrence of an alleged unlawful employment practice

2. After a charge is filed, the Commission must serve a notice of the charge on the respondent within ten days

3. The Commission then must investigate the charge, after which it must determine whether there is reasonable cause to believe that the charge is true

4. If no reasonable cause is found, the charge is dismissed; if reasonable cause is found it will attempt to conciliate the case

5. If no conciliation agreement can be reached, the Commission may bring a civil action against the respondent in an appropriate federal district court

6. If the court rules against the respondent, the court may enjoin the respondent from engaging in the unlawful employment practice and grant such affirmative relief as it may deem appropriate.

Where there is State or Local EEO Laws

Where a state or local EEO statute exists, the EEOC must wait sixty days after state or local proceedings have commenced, unless those proceedings are terminated

sooner, before it can act on a charge. The deferral period is extended to 120 days during the first year after enactment of a state or local law.

New York City Equal Employment Opportunity Requirements

In compliance with the requirements of the Equal Employment Opportunity Act of 1972, Mayor Abraham Beame issued Executive Order No. 14 on May 21, 1974. The executive order directed the implementation of a New York City Equal Employment Opportunity Program. The plan required each city agency to prepare a written EEO program. The program must consist of statements of policy, a detailed analysis of the composition of the agency's workforce and personnel practices, and a projection of action to be taken to correct problem areas identified. All such programs were to have been submitted to the Office of the Mayor by December 30, 1974.

Beyond Equal Employment Opportunity

Despite the progress made possible by recently adopted civil rights laws and policies on federal, state and local levels, there is substantial evidence that discrimination persists in many areas. Generally, civil rights laws have been most successful in dealing with practices

that do not require institutional changes. Thus, desegregation of public facilities, places of public accommodation, hospitals and other health facilities requiring basic but simple changes in conduct were generally accomplished without either violent opposition or massive federal enforcement efforts.

Elimination of discrimination practices to facilitate full participation of minority group members in America's economic main stream has proven to be much more complicated. As the following examples suggest, equal employment opportunity still is far from a way of American life.

Federal employment

In the area of federal employment, where the degree of federal control is absolute, minority group representation has increased substantially, but is grossly underrepresented in the higher salary brackets. According to a survey of minority group employment in the Federal Government by the U.S. Civil Service Commission in 1969, less than two percent of GS grade 13 and above of classified workers were Black. Less than 0.7 percent of such workers were

Spanish surnamed.[17] The employment record of some individual agencies is even worse. For example, the Federal Aviation Administration, an agency of the Department of Transportation, employed more than 20,000 air traffic controllers as of June 30, 1969. Of these, only 547 were minority group employees. Moreover, there were only 13 minority group employees among the 1600 supervisory and administrative personnel at grade GS-14 or above.[18]

State employment

Despite nondiscrimination requirements in the merit system applicable to federally aided state programs, minority group employment remains low. For example, the Mississippi Welfare Department had only thirty-eight Blacks on its staff of more than 1,500 in 1967. Data for 1968 indicated that only 5.3 percent of the employees of the Louisiana State Employment Security Agencies were Black and only 7.7 percent of the employees of the Texas State

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[17]U.S. Civil Service Commission Press Release, May 14, 1970.

[18]U.S. Department of Transportation, Federal Aviation Administration, Office of Civil Rights, Minority Group and Women Employment Reports, as of June 1969, Report No. 5 (1969).

Employment Security Agencies were of Spanish-American descent.[19]

When the State of Alabama refused to amend its standards for the merit system of personnel administration to include a nondiscrimination clause, the Department of Justice filed suit against the State. Evidence introduced at the trial indicated that in 1968 the six state agencies involved in the merit system had one Black among 988 clerical employees and twenty-six Blacks on their staffs of 2,019 professional, technical, and supervisory employees. Of the seventy custodial, labor, and laboratory helper positions, however, sixty-seven were held by Blacks.[20]

Private employment

Despite the fact that equal employment opportunity requirements have been imposed on government contractors since the 1940's and that since 1964 and 1972, Title VII has extended that requirement to most other employers, evidence gathered by the U.S. Commission on Civil Rights indicates that employment discrimination in the private sector

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[19]U.S. Commission on Civil Rights, For ALL the People . . . By ALL the People (1969).

[20]Pre-trial brief for the United States at 17, U.S. v. Frazer, C.A. No. 2709-N (Mid. Ala. 1969).

is still prevalent throughout the United States.

For example, at an April 1966 hearing of the Commission on Civil Rights in Cleveland, Ohio, testimony showed that there were 139 government contractors with facilities in Cleveland with fifty or more employees. These firms had a total complement of more than 93,000 employees. Although Blacks constituted thirty-four percent of Cleveland's population, twenty-one of the firms employed none at all and eighty-six employed less than ten percent in their workforces.[21]

Other federal agency investigations have revealed similar results. It is clear that the full potential of civil rights laws and policies has not been realized. The persistence of discrimination raises serious questions about the way Federal Departments and agencies charged with civil rights responsibilities have carried them out. More important, it raises serious questions regarding institutional forms of discrimination.

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[21]Hearing before the U.S. Commission on Civil Rights, held in Cleveland, Ohio, April 1-7, 1966.

Discrimination by Effect Rather than Intent

Clearly the most basic form of discrimination today results from normal, often unintentional and seemingly neutral practices throughout the employment process. It is these practices that Chief Justice Warren Burger was referring to, when he wrote that under Title VII,

> Practices, procedures, or tests neutral on their fact, and even neutral in terms of intent, cannot be maintained if they operate to freeze the status quo of prior discriminatory employment practices. . . .[22]

According to court decisions, intent to discriminate need no longer be shown. The interpretation has been that employment practices, neutral on their face, and equally applied to all without intent to discriminate, can in fact be discriminatory if the impact is to exclude people of one group more than those of another. The courts have ruled that if an employment practice excludes a significantly higher proportion of qualified persons from one group, it has a "disparate impact" and, unless job related, it is prohibited.[23]

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[22]Griggs v. Duke Power Co., 401 U.S. 424 (1971).

[23]Griggs v. Duke Power Co., supra; U.S. v. Hayes International Corp., 456 F.2d 112, 118 (5th Cir., 1972).

These forms of institutional discrimination are continually perpetuated by the manner in which written and oral examinations are administered. Education and experience requirements not related to the ability to perform the job have the effect of excluding large numbers of minorities and women.

Identification and elimination of such institutional forms of discrimination is the major focus of equal employment opportunity efforts today and in the future.

The New York City Public School System: A Special Case

The New York City public school system represents only one small part of a nation wide problem. But it may be a classic example of institutional discrimination. Statistics gathered by the school system clearly show disproportionate under representation of Black and Hispanic professionals. The courts have ruled that it is the consequences of employment practices, not the intent which determines whether discrimination exists. Subsequent chapters will examine the employment practices of the New York City school system and attempt to determine whether institutional discrimination does exist in its selection and promotion of minority applicants.

CHAPTER II

CURRENT POLICIES, PRACTICES AND PROCEDURES AFFECTING AFFIRMATIVE ACTION

Introduction

The first activity necessary to establishing a meaningful Affirmative Action Program within the New York City public school system is to gather detailed information on current methods of training, recruiting, selecting, appointing and promoting teachers and supervisors. Within these broad areas of concentration are many more specific matters, such as the relationship between teacher training institutions and the school system, out of town recruitment as well as recruitment in the metropolitan area, recruitment through training of para-professionals, the relationship between recruitment and the selection process, the value of state certification in the selection process, the role of the Board of Examiners and its relationship to the Board of Education and community school boards, the use and validity of written tests, in-service training and promotion, and the use of performance-based criteria in all facets of the employment process.

Current Scope and Structure of the New York City Board of Education

New York City embraces the largest public school system in the United States. Its primary function is to provide educational instruction for 1.1 million school children in regular grades, from pre-kindergarten through high school, and in special schools and classes. These services are supplemented by an extensive program of evening schools, continuing education, recreational activities as well as other related programs. The operation and maintenance of school services require facilities of nearly 1,000 buildings, a staff of approximately 125,000 pedagogical and administrative employees, and an annual budget in 1974-75 of more than 2.7 billion dollars. During the 1974-75 school year, the workforce of the city school system was officially listed at 124,350 employees, including 74,350 pedagogical positions and 50,000 supportive administrative personnel. The term "pedagogical employee" is applied to persons who are licensed by the Board of Examiners or through the alternate teacher selection method to serve in one or more of over 1,000 professional areas, including titles such as school secretary, teacher, guidance counselor, assistant principal and principal. An "administrative employee" belongs to one

of the many classifications of civil service personnel, ranging from architect to school lunch worker, and is certified for employment by the New York City Civil Service Commission.

Under the decentralized community school district system which was established by the New York State Legislature in 1969, the operation and control of the public schools are shared by a city-wide Board of Education and thirty-two community school boards. The Board of Education has jurisdiction over high schools, special schools and classes, and certain other city-wide operations. The community school boards control the elementary and junior high-intermediate schools in their respective districts, subject to city-wide policies established by the Board of Education and collective bargaining agreements.

There are seven members on the present Board of Education who will serve until June 30, 1978. One member is appointed by each of the five borough presidents, and two are appointed at large by the Mayor of the City of New York. Each community school board has nine members who are elected by the voters in each of the 32 school districts, and serve for two year terms.

The Chancellor is the chief executive officer of the school system (see figure 1). He or she has the power, duty, and responsibility of operating all schools and programs under the jurisdiction of the Board of Education, and to implement city-wide policy. The Chancellor must also assure that community school boards and community superintendents comply with applicable provisions of law, by-laws, rules or regulations, directives and agreements, relating to schools and programs under their supervision.[1]

The Current Employment System

In theory, there is a tripartite system for employing teachers and supervisors in the New York City public schools. The three components are: (1) the Division of Personnel, (2) the Board of Examiners, and (3) the community school boards-central school board.

The Division of Personnel, as the arm of the Chancellor and the Board of Education, is responsible for defining eligibility requirements, recruiting qualified candidates, providing the Board of Examiners with analyses of duties on the basis of which examinations are constructed,

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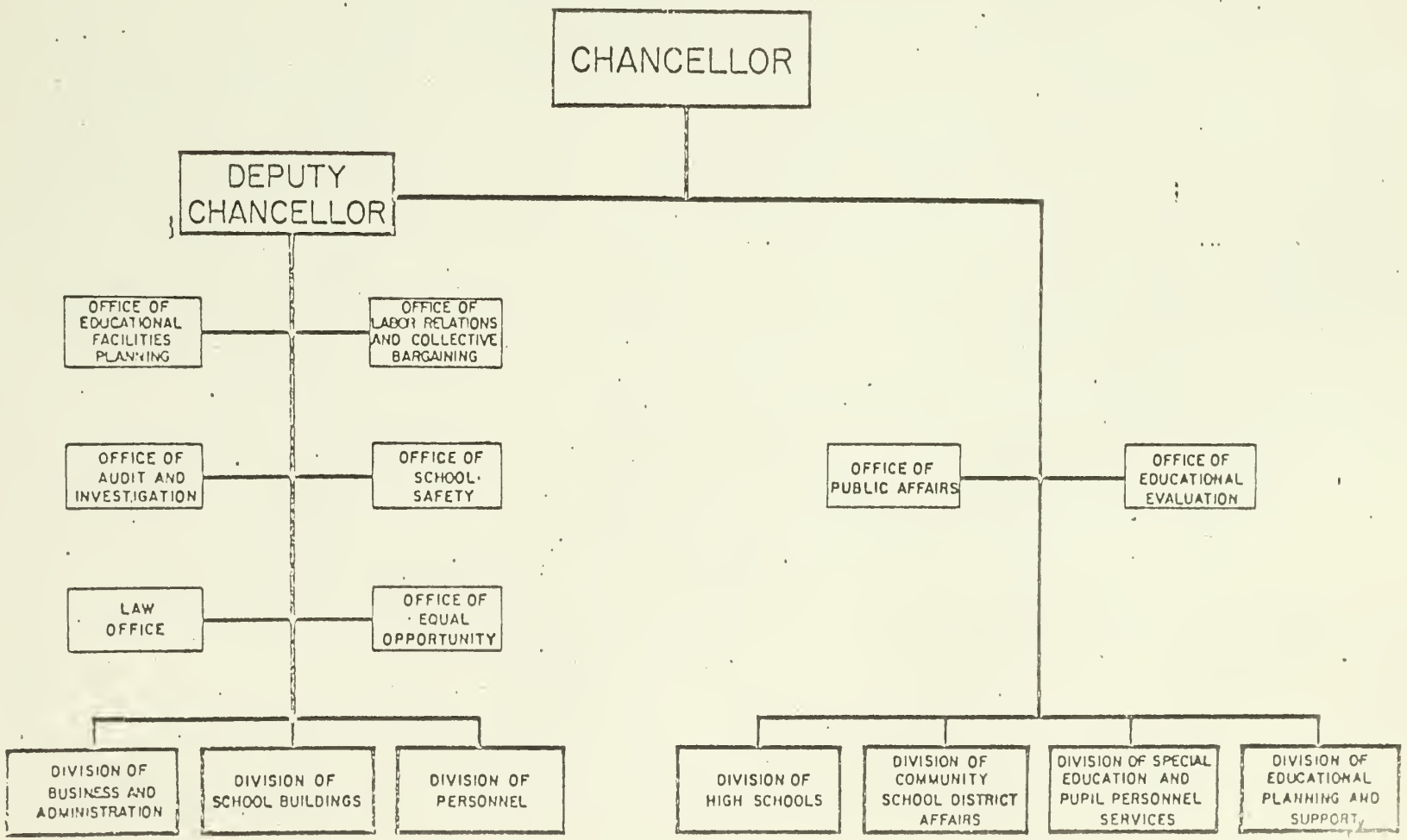
[1]The New York City Board of Education, Facts and Figures, 1974-1975.

CENTRAL HEADQUARTERS



CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

SEPTEMBER 1973

Figure 1

and instructing the Board of Examiners to give examinations in particular licenses at particular times.

The Board of Examiners is responsible for designating and administering examinations in most of the 1,000 teaching and supervisory licenses, and for compiling eligible lists of successful candidates (ranked lists for teaching licenses and qualifying list for supervisory licenses). Although the Board of Examiners is a part of the Board of Education for many purposes, it is required by statute to carry out its examination and eligible list functions in an independent manner. The New York City Board of Examiners is the only autonomous local examining body in New York State. Buffalo was the only other school district in New York State expressly required by statute to have a local examination, but in 1968 the requirement was eliminated by the legislature for most supervisory positions. But, even in Buffalo, the examination process is not administered by an independent Board of Examiners, but rather by the Office of the Superintendent of Schools.

The community school boards--for most elementary, intermediate and junior high schools--and the city board--for senior high and special schools--generally appoint teachers and supervisors from eligible lists, assign them to

schools, supervise their activities and grant tenure.

This division of authority in the employment of personnel into three discrete areas is both theoretical and greatly oversimplified. The divisions of authority are in practice less precise and the areas of overlapping of authority more extensive.

Pre-Service Training

Over 90% of the teachers in the New York City public school system receive their training in a New York City college--65% of them at the City University of New York, according to a spokesman of the Board of Examiners.[2] The most common educational qualification presented by candidates for teaching licenses is a baccalaureate degree which includes twenty-four semester hours in the professional study of education and a college supervised student-teaching experience. In the last few years, an "alternative B" examination has been offered to candidates who have baccalaureate degrees with only twelve semester hours in education (the remaining twelve to be completed within five years).

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[2]Testimony of Dr. Jay E. Greene, former member of the Board of Examiners, before a hearing of the City Commission on Human Rights held January 26, 1971.

The Board of Education, at a time when there was a teacher shortage, set up several programs in conjunction with City University for candidates who wanted to take this alternative route to licensing. The colleges involved were instructed to give priority consideration to Black and Puerto Rican candidates.

The first of such programs was the Intensive Teacher Training Program (ITTP) which allowed liberal arts graduates to take the required twelve hours of education credits in an intensive summer program. A second program, Training Experience for New Elementary Teachers (TENET), was a year long program for liberal arts graduates who needed education credits or the student-teacher experience. Black and Puerto Rican candidates comprised approximately fifty percent of this group. A third, Teacher Education Master's Program for Urban Schools (TEMPUS), was the master's degree component of TENET. That program included over fifty Spanish-speaking participants in 1969.

However, the most direct link between the school system and the training of teachers is in the area of student teaching and post-licensing training. Students who major in education most often practice-teach in their senior year, if possible, in the school district where they hope to be

employed. A number of educators have commented, however, that neither the colleges nor the school system has given this aspect of training enough emphasis to prepare students adequately for teaching in the public schools of New York City.

In-Service Training

There is very little in-service training for teachers in the New York City public school system. However, the school system does provide new teachers with a training program during their first year. This is, in fact, mandated by the agreement with the UFT. The contract requires the principal to direct the new teacher to "devote a reasonable number of his/her preparation periods, not to exceed twenty, to observing classes conducted by more experienced teachers, or to consulting others familiar with classroom problems."[3] On the supervisory level, training efforts have been primarily directed toward the professional seminars and professional internship programs.

These and other such programs over a six year period (1963-1969) are credited with increasing the number of minority

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[3]Agreement between the Board of Education of the City of New York and United Federation of Teachers, September 9, 1972-September 9, 1975, p. 91.

teachers in the New York City system by fifty percent. Yet, because of the increased growth of the system itself, and the small base from which personnel began, the increase of minority teachers represented less than one percent of the entire system.

Recruitment

The Bureau of Professional Liaison and Staffing of the Division of Personnel has primary responsibility for identifying and recruiting sufficient numbers of qualified candidates. Overall, the recruiting efforts have resulted in all vacancies being filled with regularly licensed personnel. Around 1968, one-third of all teaching positions were filled by persons with substitute licenses. That figure has declined to approximately five percent and the Board of Education has recently announced it will not license any more permanent substitutes (although it has a category called per diem substitutes). Consistently the vast bulk of recruits have come from the New York metropolitan area.

In recent years recruitment efforts outside the New York metropolitan area and those aimed specifically at Black and Spanish-speaking candidates have increased. For example, seventy-five percent of the total recruitment budget in the

1968-1969 school year was spent on out-of-town recruitment. During that same school year, almost $500,000 was allocated to the Board of Education/UFT Joint Recruitment Program which consisted largely of out-of-town recruitment. Trips were made regularly to Puerto Rico and to predominantly Black Southern colleges.

In addition, there was special recruitment and training of Spanish-speaking teachers. There was also a program which provided for para-professional employment and college training for selected veterans in elementary schools and in high schools. About fifty percent of that group were minority members. There are also career opportunities programs. These programs provide for college training for para-professionals and will lead to a degree and qualifications for a teaching license. About eighty percent of this group consist of minority members.

Despite those emphases, most teachers still come from the metropolitan area, with about sixty-five percent from the City University of New York. Also, the combined efforts have resulted in only negligible increases in Black and Puerto Rican professionals in the school system, with New York City remaining considerably below other large urban school districts in this respect.

Are the Employment Practices Discriminatory?

For more than two decades public attention has been repeatedly drawn to the employment practices of the New York City public schools system. There have been numerous charges that the employment practices were in several different respects discriminatory, in effect if not in intent. Moreover, the Board of Education's ethnic survey of teaching and supervisory staffs disclosed lower percentages of Black and Hispanics than in virtually any other major urban school system in the country (see tables 1-5). Only 8.9 percent of teachers, 9.9 percent of assistant principals and 15.7 percent of principals were Black, according to the ethnic survey of staff conducted by the Board for the school year 1973-1974. Less than three percent of the school system's professionals were Hispanics. In comparison, as of March 1969, the ethnic survey of school staff conducted by the Board at that time showed only eight Black licensed principals from a total number of 790 positions (see table 6). The increase of Black principals as reflected in the 1973-1974 ethnic survey (151 or 15.7 percent) is the result of the Decentralization Law of 1969 and the federal court case, Chance v. Board of Education.

TABLE 1

ETHNIC CENSUS OF PROFESSIONAL SCHOOL STAFF, NEW YORK CITY BOARD OF EDUCATION, 1973-74

	Total	American Indian		Black		Oriental		Span. Surnamed American		Other	
		No.	%	No.	%	No.	%	No.	%	No.	%
Principals	962	1	.1	151	15.7	2	.2	31	3.2	777	80.8
Assistant Principals	2645	0		262	9.9	9	.3	38	1.4	2336	88.3
Teachers	56168	34	*	4988	8.9	293	.5	1391	2.5	49462	88.1
Other Instructional Staff	4038	2	*	456	11.3	10	.3	232	5.8	3338	82.7
Full Time Central Office Staff	898	0		74	8.2	2	.2	26	2.9	796	88.6
Full Time Professional Staff	64711	37	*	5931	9.2	316	.5	1718	2.7	56709	87.6
Part Time Professional School Staff	2371	0		267	11.3	7	.3	46	1.9	2051	88.5
Part Time Central Office Staff	0	0		0		0		0		0	
Part Time Professional Staff	2371	0		267	11.3	7	.3	46	1.9	2051	88.5

SOURCE: Basic Educational Data System, State Education Department, State of New York

*Less than .1%

TABLE 2

ETHNIC CENSUS OF TEACHING STAFF
NEW YORK CITY HIGH SCHOOLS
1970-1971 AND 1973-1974

HIGH SCHOOLS	BLACK		SPAN. SURNAMED AMERICAN		ORIENTAL		TOTAL MINORITY		OTHER		TOTAL NUMBER
	No.	%	No.	%	No.	%	No.	%	No.	%	
Manhattan											
1970-1971	192	7.0	71	2.6	27	1.0	290	10.6	2,452	89.4	2,742
1973-1974	201	7.0	117	4.1	47	1.6	365	12.8	2,496	87.2	2,861
Bronx											
1970-1971	145	5.7	56	2.2	1	-	202	7.9	2,358	92.1	2,560
1973-1974	199	6.7	75	2.5	11	.4	285	9.6	2,684	90.4	2,968
Brooklyn											
1970-1971	194	3.6	37	.7	10	.2	241	4.5	5,119	95.5	5,360
1973-1974	261	4.6	73	1.3	15	.3	349	6.2	5,293	93.8	5,642
Queens											
1970-1971	131	3.7	30	.9	7	.2	168	4.7	3,373	95.3	3,541
1973-1974	125	3.1	37	.9	18	.5	180	4.5	3,806	95.4	3,987
Richmond											
1970-1971	13	2.2	3	.5	0	0	16	2.7	569	97.3	585
1973-1974	16	1.9	3	.4	0	0	19	2.2	861	97.8	880
Total NYC											
1970-1971	675	4.6	197	1.3	45	.3	917	6.2	13,871	93.8	14,788
1973-1974	802	4.9	305	1.9	91	.6	1,198	7.3	15,140	92.7	16,339

Source: Basic Educational Data System, State Education Department, State of New York. The 1973-1974 figures have been adjusted upwards to 100% totals based on a 92% sample of the teaching staff.

Prepared by Office of the Deputy Chancellor, Educational Policy Development Unit.

TABLE 3

ETHNIC CENSUS OF TEACHING STAFF
NEW YORK CITY SPECIAL SCHOOLS
1970-1971 AND 1973-1974

SPECIAL SCHOOLS	BLACK		SPAN. SURNAMED AMERICAN		ORIENTAL		TOTAL MINORITY		OTHER		TOTAL NUMBER
	No.	%	No.	%	No.	%	No.	%	No.	%	
Manhattan											
1970-1971	45	10.4	3	.7	1	.2	49	11.3	385	88.7	434
1973-1974	92	12.5	8	1.0	4	.6	104	14.1	617	85.9	737
Bronx											
1970-1971	48	36.6	0	0	0	0	48	36.6	83	63.4	131
1973-1974	59	20.8	1	.4	0	0	60	21.2	223	78.8	283
Brooklyn											
1970-1971	32	24.4	1	.8	1	.8	34	25.9	97	74.1	131
1973-1974	82	28.6	3	1.2	1	.4	86	29.8	199	70.2	285
Queens											
1970-1971	18	19.2	1	1.1	0	0	19	20.2	75	79.8	94
1973-1974	25	15.7	1	.7	0	0	26	16.3	134	83.7	160
Richmond											
1970-1971	3	5.2	0	0	0	0	3	5.2	55	94.8	58
1973-1974	5	4.9	3	2.9	0	0	8	7.8	95	92.2	103
Total NYC											
1970-1971	146	17.2	5	.6	2	.2	153	18.0	695	82.0	848
1973-1974	263	16.8	16	1.0	5	.3	284	18.1	1,282	81.8	1,567

Source: Basic Educational Data System, State Education Department, State of New York. The 1973-1974 figures have been adjusted upwards to 100% totals based on a 92% sample of the teaching staff.

Prepared by Office of the Deputy Chancellor, Educational Policy Development Unit.

TABLE 4

ETHNIC CENSUS OF TEACHING STAFF
IN NEW YORK CITY COMMUNITY SCHOOL DISTRICTS
1970-1971 AND 1973-1974

	BLACK		SPAN. SURNAMED AMERICAN		ORIENTAL		TOTAL MINORITY		OTHER		TOTAL NUMBER
	No.	%	No.	%	No.	%	No.	%	No.	%	
MANHATTAN											
DISTRICT 1											
1970-1971	41	3.7	20	1.8	17	1.5	78	7.0	1,037	93.0	1,115
1973-1974	40	4.1	65	6.6	16	1.7	121	12.3	798	87.7	985
DISTRICT 2											
1970-1971	37	2.9	52	4.1	67	5.3	156	12.4	1,105	87.6	1,261
1973-1974	51	4.3	21	1.7	66	5.6	138	11.5	1,057	88.5	1,195
DISTRICT 3											
1970-1971	196	15.2	35	2.7	6	.5	236	18.4	1,049	81.6	1,286
1973-1974	241	21.0	99	8.6	4	.4	344	29.9	804	70.1	1,149
DISTRICT 4											
1970-1971	163	12.6	39	3.0	2	.1	204	15.7	1,092	84.3	1,296
1973-1974	143	14.4	65	6.5	3	.3	211	21.2	785	78.8	997
DISTRICT 5											
1970-1971	545	36.8	10	.7	4	.3	559	37.7	923	62.3	1,482
1973-1974	534	45.2	18	1.6	37	3.1	589	49.9	591	51.1	1,180
DISTRICT 6											
1970-1971	129	13.0	30	3.8	10	1.0	177	17.8	817	82.2	994
1973-1974	157	15.1	82	7.9	14	1.4	253	24.4	784	75.6	1,036
TOTAL MANHATTAN											
1970-1971	1,111	15.0	194	2.6	106	1.4	1,411	19.0	6,023	81.0	7,434
1973-1974	1,166	17.0	350	5.4	141	2.2	1,657	25.3	4,884	74.7	6,541
BRONX											
DISTRICT 7											
1970-1971	150	9.6	82	5.2	4	.3	236	15.0	1,335	85.0	1,571
1973-1974	184	12.8	126	8.8	3	.2	313	21.8	1,123	78.2	1,436
DISTRICT 8											
1970-1971	118	6.9	38	2.2	3	.2	159	9.2	1,560	90.8	1,719
1973-1974	168	9.6	77	4.4	4	.3	249	14.2	1,507	85.8	1,757
DISTRICT 9											
1970-1971	160	8.4	44	2.3	2	.1	206	10.9	1,690	89.1	1,896
1973-1974	295	15.3	141	7.3	7	.3	443	22.9	1,489	77.1	1,932
DISTRICT 10											
1970-1971	33	2.5	7	.5	2	.2	42	3.2	1,272	96.8	1,314
1973-1974	53	3.4	28	1.8	4	.3	85	5.4	1,486	94.6	1,572
DISTRICT 11											
1970-1971	102	7.9	7	.6	2	.2	111	8.7	1,172	91.3	1,283
1973-1974	120	8.2	14	1.0	3	.2	137	9.4	1,318	90.6	1,455
DISTRICT 12											
1970-1971	190	9.6	70	3.6	4	.2	264	13.4	1,706	86.6	1,970
1973-1974	223	13.8	95	5.9	2	.1	320	19.8	1,297	80.2	1,616
TOTAL BRONX											
1970-1971	753	7.7	248	2.5	17	.2	1,018	10.4	8,735	89.6	9,753
1973-1974	1,042	10.7	482	4.9	24	.2	1,548	15.8	8,220	84.2	9,768

TABLE 4-Continued

ETHNIC CENSUS OF TEACHING STAFF
IN NEW YORK CITY COMMUNITY SCHOOL DISTRICTS
1970-1971 AND 1973-1974

	BLACK		SPAN. SURNAMED AMERICAN		ORIENTAL		TOTAL MINORITY		OTHER		TOTAL NUMBER
	No.	%	No.	%	No.	%	No.	%	No.	%	
BROOKLYN											
DISTRICT 13											
1970-1971	257	16.9	17	1.1	4	.3	278	18.2	1,247	81.8	1,525
1973-1974	392	30.2	36	2.8	4	.3	432	33.3	865	66.7	1,298
DISTRICT 14											
1970-1971	133	7.8	30	1.8	3	.2	166	9.7	1,539	90.3	1,705
1973-1974	136	8.6	52	3.3	1	.1	189	12.0	1,383	88.0	1,572
DISTRICT 15											
1970-1971	42	2.9	20	1.4	2	.1	64	4.4	1,392	95.6	1,456
1973-1974	50	3.3	46	3.0	2	.1	98	6.4	1,435	93.6	1,533
DISTRICT 16											
1970-1971	321	16.1	19	1.0	3	.2	343	17.2	1,653	82.8	1,996
1973-1974	378	35.3	9	.8	2	.2	389	36.3	683	63.7	1,072
DISTRICT 17											
1970-1971	129	9.4	8	.6	0	0	137	10.0	1,232	90.0	1,369
1973-1974	187	13.2	12	.6	5	.4	204	14.4	1,216	85.6	1,421
DISTRICT 18											
1970-1971	28	2.7	4	.4	0	0	32	3.0	1,021	7.0	1,053
1973-1974	7	.6	0	0	0	0	7	.6	1,088	99.4	1,097
DISTRICT 19											
1970-1971	133	6.5	14	.7	3	.2	150	7.4	1,887	92.6	2,037
1973-1974	130	7.6	39	2.3	0	0	169	9.9	1,538	90.1	1,708
DISTRICT 20											
1970-1971	10	.7	1	.1	2	.1	13	.9	1,384	99.1	1,397
1973-1974	10	.7	16	1.1	3	.2	29	2.0	1,415	98.0	1,445
DISTRICT 21											
1970-1971	20	1.4	4	.3	1	.1	25	1.8	1,394	98.2	1,419
1973-1974	21	1.5	3	.2	1	0	25	1.8	1,352	98.2	1,377
DISTRICT 22											
1970-1971	3	.3	0	0	0	0	3	.3	1,179	99.7	1,182
1973-1974	12	1.0	0	0	0	0	12	1.0	1,212	99.0	1,224
DISTRICT 23											
1970-1971	217	14.0	14	.9	3	.2	234	15.1	1,318	84.9	1,552
1973-1974	222	19.4	48	4.2	3	.3	270	23.8	872	76.2	1,145
DISTRICT 32											
1970-1971	373	13.0	19	.7	3	.1	395	13.7	2,484	86.3	2,879
1973-1974	92	8.0	48	4.1	4	.4	144	12.4	1,015	87.6	1,160
TOTAL BROOKLYN											
1970-1971	1,666	8.5	150	.8	24	.1	1,840	9.4	17,730	90.6	19,570
1973-1974	1,637	10.2	309	1.9	27	.2	1,973	12.3	14,074	87.7	16,047

TABLE 4-Continued

ETHNIC CENSUS OF TEACHING STAFF
IN NEW YORK CITY COMMUNITY SCHOOL DISTRICTS
1970-1971 AND 1973-1974

	BLACK		SPAN. SURNAMED AMERICAN		ORIENTAL		TOTAL MINORITY		OTHER		TOTAL NUMBER
	No.	%	No.	%	No.	%	No.	%	No.	%	
QUEENS											
DISTRICT 24											
1970-1971	33	3.3	2	.2	3	.3	38	3.8	963	96.2	1,001
1973-1974	57	3.0	11	.9	7	.5	55	4.4	1,187	95.6	1,241
DISTRICT 25											
1970-1971	24	2.1	4	.4	2	.2	30	2.6	1,109	97.4	1,139
1973-1974	25	2.0	7	.5	2	2.2	34	2.7	1,247	97.3	1,276
DISTRICT 26											
1970-1971	19	2.0	1	.1	0	0	20	2.1	933	97.9	953
1973-1974	3	.3	0	0	1	.1	4	.4	968	99.6	973
DISTRICT 27											
1970-1971	77	5.3	4	.3	3	.2	84	5.8	1,364	94.2	1,448
1973-1974	111	7.6	9	.6	4	.3	124	8.5	1,337	91.5	1,461
DISTRICT 28											
1970-1971	204	14.4	4	.3	2	.1	210	14.9	1,203	85.1	1,413
1973-1974	201	14.7	17	1.3	7	.5	225	16.5	1,139	83.5	1,364
DISTRICT 29											
1970-1971	196	15.5	3	.2	0	0	199	15.8	1,064	84.2	1,263
1973-1974	259	20.1	3	.3	2	.2	264	20.5	1,026	79.5	1,290
DISTRICT 30											
1970-1971	49	4.1	6	.5	7	.6	62	5.2	1,132	94.8	1,194
1973-1974	43	3.6	11	.9	9	.7	63	5.3	1,134	94.7	1,197
TOTAL QUEENS											
1970-1971	602	7.2	24	.3	17	.2	643	7.6	7,768	92.4	8,411
1973-1974	679	7.7	58	.7	32	.4	769	8.7	8,034	91.3	8,803
RICHMOND											
DISTRICT 31											
1970-1971	21	1.2	4	.2	3	.2	28	1.6	1,722	98.4	1,750
1973-1974	33	1.6	10	.5	4	.2	47	2.4	1,941	97.6	1,988
TOTAL NYC COMMUNITY SCHOOL DISTRICTS											
1970-1971	4,153	8.9	620	1.3	167	0.3	4,940	10.5	41,978	89.5	46,918
1973-1974	4,557	10.6	1,209	2.8	228	0.5	5,994	13.9	37,153	86.1	43,147

Source: Basic Educational Data System, State Education Department, State of New York. The 1973-1974 figures have been adjusted upwards to 100% totals based on a 92% sample of the teaching staff.

Prepared by Office of the Deputy Chancellor, Educational Policy Development Unit.

TABLE 5

ETHNIC CENSUS OF STUDENTS AND STAFF 1971-1972
MAJOR U.S. CITIES

CITIES	AMERICAN INDIAN No.	%	BLACK No.	%	ORIENTAL No.	%	SPAN. SURNAMED AMERICAN No.	%	OTHER No.	%	TOTAL No.
ATLANTA, GA.											
Students	6	*	73,985	77.1	60	0.1	272	0.3	21,683	22.6	96,006
Teachers	0		2,477	62.1	2	0.1	3	0.1	1,506	37.8	3,988
BALTIMORE, MD.											
Students	0		129,250	69.3	0		0		57,350	30.7	186,600
Teachers	0		4,155	59.3	0		0		2,856	40.7	7,011
BIRMINGHAM, ALA.											
Students	7	*	34,290	59.4	31	0.1	29	0.1	23,372	40.5	57,729
Teachers	0		1,101	50.1	0		0		1,096	49.9	2,197
BOSTON, MASS.											
Students	97	0.1	31,728	33.0	1,871	1.9	5,138	5.3	57,405	59.6	96,239
Teachers	1	*	356	7.2	18	0.4	34	0.7	4,534	91.7	4,943
BUFFALO, N.Y.											
Students	537	0.8	26,540	41.3	92	0.1	1,844	2.9	35,275	54.9	64,296
Teachers	5	0.2	337	10.1	3	0.1	19	0.6	2,958	89.0	3,332
CHICAGO, ILL.											
Students	1,153	0.2	315,940	57.1	4,453	0.8	61,423	11.1	170,373	30.8	553,342
Teachers	7	*	8,228	37.7	144	0.7	259	1.2	13,170	60.4	21,808
CINCINATTI, OHIO											
Students	26	*	36,808	47.3	193	0.2	88	0.1	40,763	52.3	77,878
Teachers	1	*	775	25.2	7	0.2	0		2,297	74.6	3,080
CLEVELAND, OHIO											
Students	319	0.2	83,596	57.6	248	0.2	2,844	2.0	58,189	40.1	145,196
Teachers	1	*	2,068	40.2	11	0.2	9	0.2	3,060	59.4	5,149
COLUMBUS, OHIO											
Students	40	*	31,312	29.4	259	0.2	125	0.1	74,852	70.2	106,588
Teachers	3	0.1	627	14.8	7	0.2	2	*	3,597	84.9	4,236
DALLAS, TEXAS											
Students	523	0.3	59,638	38.6	298	0.2	15,908	10.3	78,214	50.6	154,581
Teachers	3	*	1,800	28.5	4	0.1	129	2.0	4,388	69.4	6,324
DETROIT, MICH.											
Students	213	0.1	186,994	67.6	540	0.2	4,512	1.6	84,396	30.5	276,655
Teachers	52	0.5	4,563	46.5	39	0.4	58	0.6	5,109	52.0	9,821
GARY, INDIANA											
Students	34	0.1	31,200	69.6	50	0.1	3,636	8.1	9,910	22.1	44,830
Teachers	0		1,102	61.3	1	0.1	40	2.2	655	36.4	1,798
HOUSTON, TEXAS											
Students	157	0.1	88,871	39.4	819	0.4	37,281	16.5	98,282	43.6	225,410
Teachers	0		2,975	36.0	24	0.3	203	2.5	5,053	61.2	8,255
INDIANAPOLIS, IND.											
Students	57	0.1	38,522	39.3	159	0.2	259	0.3	59,079	60.2	98,076
Teachers	0		940	23.9	7	0.2	2	0.1	2,978	75.8	3,927
JACKSON, MISS.											
Students	14	*	19,708	65.9	16	0.1	4	*	10,153	34.0	29,895
Teachers	0		621	42.1	0		0		854	57.9	1,475
JACKSONVILLE, FLA. (1)											
Students	0		37,100	32.6	0		0		76,544	67.4	113,644
Teachers	0		1,361	29.7	0		0		3,228	70.3	4,589

*Less than .1%.
(1)Duval County.

TABLE 5-Continued

ETHNIC CENSUS OF STUDENTS AND STAFF 1971-1972
MAJOR U.S. CITIES (CONT'D.)

CITIES	AMERICAN INDIAN No.	%	BLACK No.	%	ORIENTAL No.	%	SPAN. SURNAMED AMERICAN No.	%	OTHER No.	%	TOTAL No.
JERSEY CITY, N.J.											
Students	22	0.1	17,548	45.4	228	0.6	6,906	17.9	13,912	36.0	38,616
Teachers	0		241	14.3	2	0.1	20	1.2	1,424	84.4	1,687
LOS ANGELES, CALIF											
Students	1,347	0.2	156,600	25.2	21,220	3.4	148,109	23.9	293,303	47.3	620,659
Teachers	25	0.1	3,382	14.5	1,173	5.0	660	2.8	18,078	77.5	23,318
MEMPHIS, TENN.											
Students	28	*	80,158	57.8	171	0.1	48	*	58,309	42.0	138,714
Teachers	0		2,370	42.9	2	*	2	*	3,155	57.1	5,529
MIAMI, FLORIDA (2)											
Students	236	0.1	63,826	26.4	598	0.2	60,210	24.9	116,939	48.4	241,809
Teachers	3	*	2,089	22.2	11	0.1	502	5.3	6,791	72.3	9,396
MILWAUKEE, WIS.											
Students	771	0.6	38,060	29.7	309	0.2	4,460	3.5	84,386	65.9	127,986
Teachers	0		792	14.8	20	0.4	26	0.5	4,512	84.3	5,350
MOBILE, ALA.											
Students	4	*	30,255	45.7	14	*	47	0.1	35,943	54.2	66,263
Teachers	0		983	41.0	0		0		1,416	59.0	2,399
NEWARK, N.J.											
Students	21	*	56,736	72.3	116	0.1	11,981	15.3	9,638	12.3	78,492
Teachers	0		1,573	39.4	12	0.3	130	3.3	2,281	57.1	3,996
NEW ORLEANS, LA.											
Students	37	*	77,304	74.6	141	0.1	1,622	1.6	24,535	23.6	103,839
Teachers	1	*	2,262	57.3	6	0.2	13	0.3	1,669	42.2	3,951
NEW YORK, NEW YORK											
Students	400	*	405,177	36.0	20,474	1.8	298,903	26.6	400,495	35.6	1,125,449
Teachers	18	*	4,884	8.8	243	0.4	1,239	2.2	49,404	88.6	55,788
OAKLAND, CALIF.											
Students	622	1.0	39,121	60.0	3,986	6.1	5,412	8.3	16,048	24.6	65,189
Teachers	6	0.2	754	29.6	107	4.2	58	2.3	1,620	63.7	2,545
PHILADELPHIA, PA.											
Students	0		173,874	61.4	0		9,550	3.4	99,541	35.2	282,965
Teachers	0		4,006	33.7	0		0		7,893	66.3	11,899
PITTSBURGH, PA.											
Students	12	*	29,274	41.8	190	0.3	120	0.2	40,484	57.8	70,080
Teachers	0		517	15.8	5	0.2	2	0.1	2,741	84.0	3,265
ST. LOUIS, MO.											
Students	54	0.1	72,629	68.8	99	0.1	203	0.2	32,632	30.9	105,617
Teachers	1	*	2,128	53.7	9	0.2	5	0.1	1,822	46.0	3,965
SAN FRANCISCO, CA.											
Students	249	0.3	25,055	30.6	19,088	23.3	11,511	14.0	26,067	31.8	81,970
Teachers	10	0.2	409	9.8	350	8.4	183	4.4	3,239	77.3	4,191
WASHINGTON, D.C.											
Students	18	*	133,638	95.5	598	0.4	818	0.6	4,928	3.5	140,000
Teachers	0		4,995	84.6	7	0.1	25	0.4	875	14.8	5,902

*Less than .1%.
(2)Dade County.

Source: Directory of Public Elementary and Secondary Schools in Selected Districts: Enrollments and Staff by Racial/Ethnic Group, Fall 1972, Report OCR 74-75.

Prepared by Office of the Deputy Chancellor, Educational Policy Development Unit

TABLE 6

ETHNIC SURVEY OF LICENSED SUPERVISORY POSITIONS IN THE PEDAGOGICAL SERVICE

Position	No. of Whites	No. of Blacks	No. of Puerto Ricans	No. of Orientals
Principals	790	8	0	0
Asst. Principals	1,491	114	4	0
Directors	23	2	0	0
Asst. Directors	50	4	0	0
Asst. Administrative Directors	40	5	0	0

SOURCE: Office of Superintendent of Schools, Board of Education, City of New York, March, 1969.

Quite apart from several other indicators of possible failure to offer equal employment opportunity, the percentage figures are unusually low for a profession which has traditionally been among the professions most open to Blacks and other minorities, and for a city where one-third of the population and sixty-four percent of the public school children are from minority groups.

The availability of minority teachers in other urban areas is clearly seen as shown in table 7. Of the nine major United States cities surveyed, having sixty to seventy percent minority student population, New York City has the

TABLE 7

MINORITY STUDENTS AND MINORITY TEACHERS
IN NINE MAJOR U.S. CITIES
HAVING 60-70 PERCENT MINORITY STUDENT POPULATIONS

	MINORITY STUDENTS	MINORITY TEACHERS	% MINORITY STUDENTS	% MINORITY TEACHERS	CONCENTRATION INDEX OF MINORITY TEACHERS TO MINORITY STUDENTS*	RANK ORDER**
Baltimore	129,250	4,155	69.3	59.3	4.8	1
Chicago	382,969	8,638	69.2	39.6	3.2	5
Detroit	192,259	4,712	69.5	48.0	3.9	3
Jackson	19,742	621	66.0	42.1	3.6	4
Jersey City	24,704	263	64.0	15.6	1.4	8
New York	724,954	6,384	64.4	11.4	1.0	9
Philadelphia	183,424	4,006	64.8	33.7	2.9	6
St. Louis	72,985	2,143	69.1	54.0	4.4	2
San Francisco	55,903	911	69.2	22.7	1.9	7

Source: Directory of Public Elementary and Secondary Schools in Selected Districts: Enrollments and Staff by Racial/Ethnic Group, Fall, 1972. Report OCR 74-75.

*The concentration index value for each city was arrived at by way of the following two-step process: (1) $\frac{\%\text{ minority teachers}}{\%\text{ minority students}} = x$; (2) $\frac{x}{.1770}$ = concentration index value. The lower this value, the greater the disparity between % minority teachers and % minority students.

**1 = the city with the least disparity between % minority teachers and % minority students; 9 = the city with the greatest disparity between % teachers and % minority students.

lowest percentage of minority group teachers. These statistics are cited only to point out the unique position New York City is in, not to suggest that there is a proper racial or ethnic ratio for any city or school system.

Today, one of the major problems of the New York City school system is the recruitment of enough Black and Spanish-speaking teachers. Despite substantially increased efforts during the past several years, results have been small. Board of Education statistics show that Black teachers in the system increased from 8.2 percent in 1963 to 8.8 percent in 1966 to 9.1 percent in 1969. The 1971 statistics showed a decrease to 7.6 percent.[4]

The statistics regarding Puerto Rican and other Spanish-speaking teachers and supervisors are even more discouraging, according to the latest ethnic survey of professional staff (1973-1974). Only 2.9 percent of the professional staff were Spanish sur-named. Yet the number of Puerto Rican and other Spanish-speaking students in the New York City public schools is fast approaching 300,000 or 27.1 percent of the total school population (see table 8).

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[4]The New York City Board of Education, Information Center on Education Ethnic Census.

TABLE 8

ETHNIC COMPOSITION OF DAY SCHOOL POPULATION*

Level	Blacks	Indians	Orientals	Puerto Ricans	Other Surnamed Spanish Americans	Others	TOTAL
Elem. Schools	201,683	226	12,330	140,110	28,867	170,182	553,398
JHS-Int. Schools	87,361	93	4,772	53,331	10,861	70,584	227,002
Academic HS	91,741	209	5,415	42,670	13,018	111,753	264,806
Vocational HS	16,521	45	688	14,067	1,325	10,590	43,236
Special Schools	5,758	4	47	3,274	321	2,378	11,782
TOTAL	403,064	577	23,252	253,452	54,392	365,487	1,100,224
Percent of Total	36.6	0.1	2.1	23.0	5.0	33.2	100.0

*As of October 31, 1974, excluding 2,681 students receiving Home Instruction.

Dr. Phyllis Wallace, Vice President of the Metropolitan Applied Research Center in New York, also put the New York City minority group figures into a national perspective. She commented:

> When the recruitment and promotion of minority group teachers and supervisory staff in the top five cities in the United States are compared, it becomes apparent that New York City's record is, overall, the poorest. . . . In Chicago, Detroit and Philadelphia, the percentages of minority group teachers is at least three and one-half times as great as New York City. Los Angeles, next lowest to New York City, has almost twice the percentage of Black and Spanish-speaking teachers as New York City.[5]

According to Dr. Wallace, New York City also has the poorest record among the largest cities in terms of the percentage of minority group personnel in supervisory positions and the ratio of minority group teachers and principals to minority group students.

Mrs. Daisy Hicks, a supervisor of the Board of Education's out-of-town recruitment program said that out-of-town recruiting has not succeeded. Mrs. Hicks attributed her difficulties to several factors: (1) a cumbersome, confusing selection process, (2) uncertainty about New York City's commitment to minority group professionals, and (3) the lack

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[5]Testimony of Dr. Phyllis Wallace, before a hearing of the City Commission on Human Rights, January 28, 1971.

of guidelines with respect to professional staff integration.

How much of the problem rests with recruiting as opposed to selection? Most dissatisfaction has focused on the selection procedure. The Division of Personnel and the Board of Examiners have recently, for the first time, compiled data about the pass-fail performance of Black and Spanish-speaking candidates on their examinations. This compilation was required by a federal court order in connection with a suit brought by the NAACP Legal Defense and Educational Fund, Inc., challenging the legality of the school system's supervisory examinations. A similar court case, Rubinos v. Board of Education, is also now in litigation. In Rubinos, the plaintiffs allege that the Board of Examiners' teacher selection procedures discriminate against Blacks and Spanish-speaking candidates.

Selection

In the public mind, selection of teachers and supervisors in the New York City school system is regarded as the domain of the Board of Examiners. That has been only partially true since it is the Board of Education which establishes eligibility requirements to be met before a candidate can begin the examination process. At the other end of the

process, the body which appoints the candidate (the City Board or community boards for schools under their respective jurisdiction) has discretion in making the initial appointment from eligible lists, subject to the requirement that appointment to teaching positions be made generally from the top three candidates on ranked lists. By virtue of the 1969 Decentralization Law, eligible lists for all supervisory positions are qualifying rather than ranked. Therefore, anyone whose name is on the list can be appointed. The appointing body also has discretion as to the granting of tenure, which is a later part of the selection process.

In addition, other provisions of the Decentralization Law authorize community boards in certain circumstances to appoint professional personnel outside the framework of the Board of Examiners system. Community boards can select their community superintendents on the basis of state certification. And when teaching vacancies occur in schools which are in the lowest forty-five percentile on city-wide reading tests, the community boards can appoint teachers from October 1 to May 1 on the basis of their performance on the National Teacher Examination. Teachers may also be selected from a regular ranked list but without regard to their rank, or from an unranked list based on a special qualifying examination given

by the Board of Examiners.

Despite these modifications, the local examination is still at the heart of the selection process. And the Board of Examiners, as the judge of both content and performance in relation to examinations, continues to be a central force in the selection of teachers.

The New York State Constitution requires that appointments to the civil service, including teaching and supervisory positions, "be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive. . . ." The State Education Law permits each city school board in the State except Buffalo and New York City to make appointments based on state certification and such additional or higher qualifications as it prescribes. The 'merit and fitness" requirement of the State Constitution may be fulfilled by the local school board's determination that a candidate possesses the necessary qualifications prescribed by the State. And each school board has discretion to decide the practicability of determining merit and fitness by examination, competitive or non-competitive. Only in New York City and Buffalo has the Legislature determined that competitive or qualifying examinations for most teaching and

supervisory positions are practicable on a city-wide basis, and only in New York City has it required a Board of Examiners.

A typical examination conducted by the Board of Examiners consists of a written test with short-answer and essay or written English questions, an interview test, a review of record, and a physical-medical examination. In some cases there may also be a performance component.

According to the courts, none of the aforesaid aspects is required by the State Constitution or the State Education Law. The requisite examination may consist of an unassembled examination--perhaps just a review of record. And an unassembled examination can be competitive as well as qualifying. The Board of Examiners has created some eligible lists on the basis of unassembled examinations. Presumably it has the discretion to do so in all cases.

Job Descriptions and Testing

The absence of updated job descriptions for teaching positions is also a source of concern to some educators in New York City. Dr. Richard Barrett, Office of Admissions Services, City University of New York, who specializes in the impact of testing of minority groups, criticized the job

description facet of the process for reasons beyond failure to update. He said:

> The first and, I think, most crucial step in developing a selection procedure is a job description. The job description should tell what a person does, why he does it, how he does it, what skills are involved, what kind of performance is likely to lead to success, what kind of performance is likely to lead to failure. Once there is a good job description, and this could take months for a complicated job such as that of a principal, the description will serve as a guide in the development of the rest of the selection procedure.[6]

If a test is not sufficiently related to a careful, complete and current job description, its job-relatedness is clearly at issue. That raises a serious legal issue according to former Assistant Attorney General Stephen Pollak, in charge of the Civil Rights Division of the Justice Department. He said:

> The Supreme Court has ruled that any qualification must have a rational connection with the applicant's fitness or capacity to perform an occupation or profession. . . . In my judgment, this means that no school board may lawfully use a standardized test as part of its selection process, whether for hiring, retention or promotion, unless that test is a valid and reliable measure of the candidate's capacity to perform well on the job for which they are under consideration. In fact, the United States District Court for the District of Massachusetts has so held in December of 1969 in the case called Arrington v. Massachusetts Bay Transportation Authority. It ruled there that the Authority denied rights guaranteed by the Fourteenth Amendment

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[6]Testimony of Dr. Richard Barrett, before a hearing of the City Commission on Human Rights, January 27, 1971.

when it decided among applicants . . . on the basis of scores from tests which were not job-related.[7]

Mr. Pollak amplified these remarks in testimony so important as to warrant abundant quotation:

> The thrust of the due process requirement is simply that school boards must act reasonable. If a board refuses to hire, retain or promote a teacher because of his score on a test, then the board should be able to show that the test is a reliable predictor of the capacity of those taking the test to perform on the job in that system. If the board cannot make this showing, its action, if challenged, will not be sustained. To fulfill the mandate of the Equal Protection Clause, the standardized test must not burden or benefit candidates because of their race, economic class, or religion. . . . Further, where a test measures only a portion of the qualifications required for successful performance on the job, and that is really true with all tests that I know of, and where members of a minority group uniformly score lower on the test, the Equal Protection Clause would preclude a school board from acting solely on the basis of the test. . . . There is no requirement on plaintiffs to show that the school board has used the test purposefully to discriminate. . . . In determining whether a test discriminates against members of a minority group who will be in the test population, the school board should make its own study using expert help as necessary. . . . Where a test makes valid predictions for members of a majority group, but not for a minority, it should not be used in evaluating the latter. . . . Where the test measures minor traits of teachers rather than major ones, it should not be given significant weight. . . . Alternatives which measure critical traits should be sought and weighed more heavily. Moreover, this process of validation and review for non-discrimination should not be conducted once and then forgotten. Analysis of the effect of the test on minority applicants and review of the relationship of the test to the

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[7]Testimony of Mr. Stephen Pollak, before a hearing of the City Commission on Human Rights, January 27, 1971.

> skills considered necessary to top performance on the job must be a continuing responsibility of the school administrators. . . . I fear that few, if any, school boards have made . . . the studies necessary to insure that a test serves their legitimate needs without discrimination. These studies must be made and repeated as needs change, if tests are to be the servant of the boards, rather than their master. . . . Unless used within proper and careful limits, a test adopted as a part will become the whole of a selection process in what I believe will be serious risks of violations of the Constitution.[8]

The recent case of Chance v. Board of Examiners challenged the constitutionality of the Board's supervisory examinations along the lines discussed by Mr. Pollak. The Federal District Judge has ordered the Board of Examiners and Board of Education to provide pass-fail data broken down by race. To do so, the Board has had to conduct its first such study regarding supervisory examinations. Nothing in the records suggest that such a study, or any other study dealing with the effect of the examinations on minority groups, has been conducted with regard to teacher examinations.

The absence of an adequate job description may create legal problems in light of Mr. Pollak's testimony, but the expertness with which job tasks are translated into test items may also require scrutiny. The need for substantial

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[8]Ibid.

expertise in the areas of psychometrics and personnel management is well recognized by the experts.

Except for the four members themselves, the entire permanent staff of the Board of Examiners, which consist mainly of examination assistants, are employed by a rather loose informal process of recommendation with no specific job description required. They are licensed pedagogical personnel already in the school system who are assigned to the Board of Examiners. They are not required to have any background or training in test construction. Indeed, there are no written requirements at all and apparently no written procedures regarding who among the school system's licensed personnel will be assigned to the Board of Examiners. The process by which temporary examination assistants are selected is, if anything, even more informal. Many see this process as totally inconsistent with a merit system, and members of the Board of Examiners agree that substantial changes should be made.

Lack of Objectivity or Bias

Many charge that the New York City school system is discriminatory, if not in purpose, certainly in effect, and not alone on racial or ethnic grounds. It also operates, it

is charged, against outsiders, against all who are different, and against all who do not reflect the conventional wisdom. Dr. Laurence Iannacone, Professor of Education Administration at the University of Toronto and Staff Director of a study of the Board of Examiners, testified at a hearing conducted by the New York City Commission on Human Rights in 1971 that the personnel practices of the school system, "function to protect the vested interest of earlier arrivals, more established ethnic populations . . . at the expense of more recent in-migrants or newer upwardly mobile groups. The City schools' personnel system is so inbred as to be sociological incest."

Dr. John King, formally Deputy Superintendent of New York City Schools and a Black, said, at the same hearing, that he thought the small number of Black and Puerto Rican professionals was not a result of deliberate, planned discrimination. "I think that it's worse. It is not unfairness, it is indifference. . . ."

Experts see the teacher's examination process as having two main sources of bias--cultural and geographic bias in the written test and opportunity for highly subjective reactions in the oral interview and review of record.

Studies and Evaluations

In 1959, the political scientists Wallace Sayre and Herbert Kaufman characterized the Board of Examiners as "A civil service reformer's dream, a bureaucrat's delight, and an official's nightmare." Their main criticism of the Selection technique was that it limited the sensitivity about the work setting that people are being recruited for, and that the examination was no more than a "ritualistic device to promote insiders."[9]

In 1963 and 1966, the Daniel E. Griffith Research Team commented on "The Board of Examiners' inefficiency in recruitment and promotion procedures", and on "The favored position of insiders." The Griffith recommendations were "The complete abolition of the Board of Examiners, setting up a personnel commission, . . . using the National Teacher Examination as a basis for recruitment."[10] These recommendations were never instituted. However, it was the Griffith

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[9]Wallace Sayre and Herbert Kaufman, Governing New York City, a report on the Board of Examiners, New York City, 1959.

[10]Daniel E. Griffiths, John S. Benben, Samuel Goldman, Laurance Iannaccone, Wayne J. McFarland, Teacher Mobility in New York City, A Study of the Recruitment, Selection, Appointment, and Promotion of Teachers in the New York City Public Schools, Center for School Services and Off-Campus Courses, School of Education, New York University,

Study that gave Alfred Giordano, then President of the Board, the clout necessary to push through legislation in 1967 to reduce the size of the Board of Examiners from nine to five, as well as to change the administration to provide for more flexibility in promotion procedures.

Dr. Marilyn Gittell, in her school study published in 1968, found merit in the charges of "inbreeding" against the school system. Her study showed that of twenty-six field superintendents serving at that time, nineteen or seventy-six percent had been in the school system more than thirty years, and only one had been in the system less than twenty years.[11]

In 1964, after a great deal of movement in the city in mobilization of parents to bring about equal opportunity in education, not only for young people, but for the Black and Puerto Rican professionals, the Board of Education urged State Education Commissioner James Allen to appoint a com-

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August 30, 1963; Daniel E. Griffiths, Richard C. Lonsdale, Laurance Iannaccone, Samuel Goldman, A Report of Recommendations on the Recruitment, Selection, Appointment and Promotion of Teachers in the New York City Public Schools, Center for Field Research and School Services, New York University, 1966.

[11]Edward Hollander and Marilyn Gittell, Six Urban School Districts, (New York: Praeger, 1968).

mittee to make recommendations to the Board on its desegregation policies. One of the major issues of that report was that of the recruitment, licensing, appointment and promotion of Black and Puerto Rican professionals.

The Allen Committee made note that Black and Puerto Rican candidates have had more difficulty than others progressing through the system's hierarchy. In rejecting the Board of Examiners' attempt at rationalization for its procedures in the situation, the Committee stated:

> It is not enough that selection standards be high and objective. An equally important question is whether they are sufficiently relevant and flexible to obtain people with the qualities most needed in the schools. It should be possible in 1964 to find more than the present group of fewer than ten Negroes who are competent to handle some of the system's more than 1,200 administrative positions. Surely more than the present two or three Negroes are capable of outstanding service among the 800 plus principalships.[12]

Summary

Despite the Board of Education's defense of its recruitment and selection procedures, the fact is that few Black and Spanish-speaking candidates pass the exams for teaching and supervisory positions, particularly the super-

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[12]State Education Commission Advisory Committee on Human Relations and Community Tensions, Desegregating the Public Schools of New York City, a report for the Board of Education of New York City, May 12, 1964.

visory exam. The grand results of the meritorious recruitment, licensing, and promotional procedures of the Board of Education and the Board of Examiners up to the 1973-1974 school year was an 11.9 percent minority group professional staff. Results of a research of other major urban school systems across the country conclude that New York City has the worst record of any major urban school system for the hiring of minority group professionals.

While the Board of Education and the Board of Examiners claimed to have instituted many liberal reforms, the meritorious appointments and promotions have not sufficiently changed the imbalance. As a consequence, today the New York City public school system is not in compliance with federal law, presidential executive orders or court decisions which require the integration of staff at all levels.

CHAPTER III

THE BOARD OF EXAMINERS AND THE SELECTION PROCESS FOR SUPERVISORY POSITIONS

Introduction

The New York City school system has been described by David Rogers as a system, "typical of what social scientists call a 'sick' bureaucracy--a term for organizations whose traditions, structure, and operations subvert their stated missions and prevent any flexible accommodation to changing client demands."[1] He stated further that the system has all those characteristics that every large bureaucratic organization has, but they have been instituted and followed to such a degree that they no longer serve their original purpose.

The one institution within the school system that best fits Rogers' description of a bureaucracy is the Board of Examiners. Rogers has stated, "No other single agency within the system contributes so much to a perpetuation of the status quo. . . . The Board of Examiners is the one

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[1] David Rogers, 110 Livingston Street (New York: Random House, 1969, p. 267.

institution that would have to be radically changed for any meaningful reform. . . ."[2]

Twenty-five years ago Strayer and Yavner in their evaluation report of the school system said,

> Since the teaching, supervisory and administrative personnel of any school system have the greatest influence on the kind of education children and youths receive, the impact of the Board of Examiners on the quality of the educational product of the New York City public schools can hardly be overestimated.[3]

What is the Board of Examiners?

The Board of Examiners is a statutory body, created by an act of the legislature to function as the examining body for the Board of Education. Although nominally subject to the directives of the Chancellor and the Board of Education, it operates under its own bylaws and enjoys great independence of action.

No person may begin to teach in the New York City public schools unless he or she has been found "fit and meritorious" by the Board of Examiners. Nor, until 1971,

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[2]Ibid.

[3]George Strayer and Louis Yavner, Administrative Management of the School System of New York City, a report to the New York City Board of Education, October 1951, 2:749.

could a person advance to supervisory or administrative positions unless he or she successfully completed an examination administered by the Board of Examiners.

The duties of the Board of Examiners are specified in the education law of New York State and are essentially as follows:

> It shall be the duty of the Board to hold examinations whenever necessary, to examine all applicants who are required to be licensed or to have their names placed upon eligible lists for appointment in the schools in such city, except examiners, and to prepare all necessary eligible lists. . . . It shall perform such other duties as the Board of Education may require.[4]

The Board of Examiners is unique in several respects. It selects the staff for the largest public school system in the world. It differs from examining boards of smaller public school systems in the great number and variety of examinations it administers. It differs from the civil service commissions of large municipalities and states in that it deals almost exclusively with professionally trained applicants.

Brief History

The Board of Examiners was organized in 1898 by an act of the state legislature. It originally consisted of four

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[4]Education Law, Section 871, as added by L. 1917, Ch. 786, and amended by L. 1920, Ch. 837.

members and the Superintendent of Schools who was chairman, ex officio. In 1917 the Superintendent of Schools was removed from the Board of Examiners, and the four man board began to elect its own chairman. In 1920 the membership of the Board was increased to seven by the State legislature. The Superintendent of Schools or his delegate was still excluded from the Board. In 1937 the composition of the Board was again changed, this time from seven to eight members. One of the eight was to be the Superintendent of Schools. In 1947, ten years later, its number was increased to nine. In addition, the Superintendent, as one of the nine members, was authorized to be represented by a voting deputy. Finally in 1967, primarily as a result of Daniel E. Griffith's study of 1966, the State legislature reduced the size of the Board from nine to the current five members.

Organization of the Board of Examiners

The current five member Board of Examiners consist of a chairperson, three examiners and the Chancellor's designee (the Executive Director of Personnel). The examiners (including the chairperson) are appointed by the Board of Education after a competitive examination conducted by the New York City Civil Service Commission. The appointments to

the Board of Examiners carry life tenure. For the first time in the history of the Board of Examiners, two of its present permanent members are Black. However, none are Puerto Rican.

Charges of Discrimination

Despite the Board of Examiners' defense of testing procedures on the ground that they eliminated patronage, some Board of Education members, civil rights groups, the Chairperson of the City Commission on Human Rights, Black teachers' organizations and Black supervisors, coalitions of Black ministers, and former Mayor John V. Lindsay, have attacked the institution for discrimination against Blacks. Few hard facts were produced which clearly demonstrate the charge beyond individual complaints. Nevertheless, statistical data as well as individual reports lend evidence that Black applicants were not received with open arms in the past. For example, in 1969 there were only eight Black licensed principals out of a total of 790.[5]

There has also been much concern voiced by Black teachers and civil rights leaders concerning the coaching courses given by principals, department heads or assistant

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[5]Board of Education, City of New York, Ethnic Survey of Licensed Supervisory Positions in the Pedagogical Service, March, 1969.

superintendents for people preparing to take the assistant principal and principal exams. Many Blacks complained that those coaching courses, for years, were only open to "insiders"; that principals often invited only their friends to attend, and Blacks seldom got into the courses. In addition, the coaching courses were expensive. Some of the coaching schools charged from $300 to $500.

The coaching courses were essentially memorization exercises. Coaches generally used mimeograph machines to produce standard answers to standard questions and would suggest mnemonic formulas to help applicants prepare for the test. Regardless of the validity of the complaints, the fact is that few Blacks and Hispanics passed the supervisory exams.

Chance-Mercado v. the Board of Examiners: A Case History

There have been numerous studies and evaluations of the Board of Examiners over the last twenty years. Many of the studies and evaluations have recommended completely abolishing the Board of Examiners. However, it was not until 1970, when two acting principals named Chance and Mercado filed suit in Federal Court against the Board of Examiners charging discrimination, that any meaningful change took place

with respect to this institution. The implications of this case are of such significance as to warrant abundant review.

Early in 1970, Boston Chance, a Black acting principal of P.S. 104, an elementary school in the Bronx, and Louis Mercado, a Puerto Rican acting principal of P.S. 75, an elementary school in Manhattan, brought suit against the Board of Examiners and the Board of Education in the United States District Court, Southern District of New York. In the class action suit, Messrs. Chance and Mercado alleged that the competitive examinations, which must be passed by a candidate before he or she can qualify for licensing and appointment, discriminated against Blacks and Puerto Ricans.

The suit further charged that the examinations had not been validated or shown to fairly measure the skill, ability and fitness of applicants for a particular supervisory position. Nor did it indicate that success on the examinations led to success as a supervisor. Federal Judge Walter R. Mansfield subsequently temporarily enjoined the Board of Examiners from conducting supervisory examinations and establishing eligibility lists.

Former Requirements for Permanent Appointment to Supervisory Positions

An applicant for permanent appointment to a supervisory position in the New York City public school system prior

to 1971 had to, in addition to meeting State requirements, obtain a New York City license. First, each candidate must have met minimum education and experience requirements established by the Board of Education and the Chancellor. For example, a candidate for principal of a day elementary school must, among other things, have had four years of teaching experience in day schools under regular license and appointment as a teacher; two years of supervisory experience in day schools under license and appointment; or have met various alternative experience requirements.

Next the candidate must have passed an examination procedure prepared and administered by the Board of Examiners for the particular type of classification of supervisory post desired. This may have taken as long as two years to complete. If the candidate successfully completed the testing procedure, he or she was granted a license and placed on a list of those eligible for assignment to the type of supervisory position involved. The appropriate school governing body--the central board for high schools and the community boards for elementary and intermediate schools--then selected the person it wished from the eligible list to fill an open position. Since appointments of permanent supervisory personnel in the New York City school system were only made from

lists of eligibles who had passed examinations, the Board from time to time announced and conducted examinations for particular supervisory positions (of which there were more than fifty different types) following which the number of persons eligible for appointment were supplemented by promulgation of lists of those who passed the latest examinations. If a successful candidate, after being listed as eligible for appointment, was not appointed within four years, he or she was dropped from the list and must again pass the qualifying examination to be placed as eligible.

As previously stated, only in the cities of New York and Buffalo does State law provide for examinations in addition to State certification, and only the New York City school system maintains a Board of Examiners and the specific examination and licensing procedure spelled out in the Chance court case.

Boston M. Chance had been employed in the New York City school system for over fifteen years and was an acting principal of an elementary school in the Bronx. He was found to possess all of the basic qualifications of education and experience established by State law and the Board of Education for the position of principal of an elementary school. However, Mr. Chance did not have a city license as

an elementary school principal and therefore was barred from securing a permanent position as principal. In September, 1968, Mr. Chance took the examination given by the Board of Education for the position of assistant principal, junior high school, but failed it and thus was not placed on the eligibility list and was not issued a license entitling him to permanent appointment.

Louis Mercado, a Puerto Rican who holds a New York State license as a principal, had been employed in the New York City school system for over twelve years. He had served as acting principal of an elementary school in Manhattan, but was barred from permanent appointment because he did not have a New York City license as an elementary school principal. Mr. Mercado never took the relevant Board of Examiners' supervisory examination.

Both Mr. Chance and Mr. Mercado were selected for their acting principalships by their respective community school board, in accordance with New York City's Decentralization Act. In some instances community school boards found, after interviewing licensed principals listed as eligible by the Board, that other persons not licensed were more qualified to serve as principals than those who were licensed.

At the time of the Chance-Mercado case in 1970, there were over 900 licensed principals serving the New York City school system. The principals served on varying levels such as elementary day, junior high school and high school positions. While most of them acted as heads of schools, others functioned in administrative positions. Of the approximately 900 principals employed by the New York City school system at that time (1970-71), only eleven were Black and only one was Puerto Rican. Furthermore, of the 750 licensed principals of New York elementary schools, only five were Black and none were Puerto Rican.[6]

Of the 1,610 licensed assistant principals of New York City junior high and elementary schools, only seven percent were Black and two percent were Puerto Rican. Furthermore, when the list for the position of principal, elementary school, was originally promulgated, only six out of 340 candidates were Black and none were Puerto Rican. When the list for principal, high school, was promulgated, none of the twenty-two licensed candidates were Black or Puerto Rican. The promulgated list of licensed assistant principals for junior high schools revealed that only fifty-five out of

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[6] Ibid., September, 1970.

699 candidates were Black and none were Puerto Rican.[7]

The above statistics were the basis for the Chance-Mercado court action. It was their contention that the written and oral examinations of the Board of Examiners were the major factors accounting for the extremely low percentage of Black and Puerto Rican supervisors in a school system in which over fifty-five percent of the student body were Black and Puerto Rican.

Their basic argument was summarized in court papers as follows:

> These tests place a premium on familiarity with organizational peculiarities of the New York City school system which, while having little to do with educational needs, are largely gained through coaching and assistance from present predominately white, supervisory personnel.[8]

The plaintiffs further amended their complaint as follows:

> The testing procedures do not indicate a candidate's ability to do the job being tested for. There is no evidence that they measure merit or fitness, they have never been validated, and they are unreliable psychological instruments.[9]

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[7]Ibid.

[8]Chance et al., v. the Board of Examiners and the Board of Education of the City of New York et al., No. 70 Civ. 4141, September 20, 1971.

[9]Amended complaint submitted to the court by Chance and Mercado.

Rather than risk the endless delay that would have been encountered while the parties obtained essential evidence through pretrial discovery procedures, the court directed the parties to use their best efforts to agree on a procedure whereby the Board of Examiners and the Board of Education would compile the necessary racial statistics. After months of research the court was given the pass-fail statistics for the relevant racial and ethnic groupings of candidates for fifty supervisory examinations given over the past few years.

The Survey

The ethnic and racial survey submitted to the court revealed that out of 6,201 candidates taking most of the supervisory examinations given in the last seven years (1963-70), 5,910 were identified by race. Of the 5,910 identified, 818 were Black or Puerto Rican and 5,092 were others (white). The court's analysis of the aggregate pass-fail statistics for the entire group revealed that only 31.4 percent of the 818 Black and Puerto Rican candidates passed as compared with 44.3 percent of the 5,092 white candidates. The court thus concluded that on an overall basis, white candidates passed at almost one and one-half times the rate

of Black and Puerto Rican candidates. The overall figures, however, told only part of the story. Of greater significance, stated the court, were the results of two examinations which had by far the largest number of candidates. The two examinations were for Assistant Principal of Day Elementary School and Assistant Principal of Junior High School (see table 9).

The court concluded that white candidates passed the examination for Assistant Principal of Junior High School at almost double the rate of Black and Puerto Rican candidates, and passed the examination for Assistant Principal of Day Elementary School at a rate one-third greater than Black and Puerto Rican candidates.

The gross disparity in passing rates on those two examinations was of significance to the court not only because they were taken by far more candidates than those taking any other examinations conducted in the last seven years, prior to that time, but also because the assistant principalship has traditionally been the route to and prerequisite for the most important supervisory position--Principal. Therefore, to the extent that Black and Puerto Ricans were screened out by the examination for Assistant Principal they were not only prevented from becoming Assistant Principals

TABLE 9

ETHNIC SURVEY OF CANDIDATES TAKING SUPERVISORY EXAMINATIONS DURING THE PERIOD, 1963-70

Examination	Caucasian		Black		Puerto Rican		Black and Puerto Rican		Probability of chance
	Total	% Pass	Total	% Pass	Total	% Pass	Total	% Pass	Result less than
Asst. Prin. Day Elem. Schools, 1965 Exam. (PF-03)	1171	61.3	278	45.68	7	28.57	285	45.26	1/1 million
Asst. Prin. Jr. High Schools, 1968 Exam. (PF-43)	1319	48.82	236	26.27	14	14.29	250	25.60	1/1 million

SOURCE: Chance v. Board of Education.

Table adapted from Affidavit of plaintiffs' expert, Professor Jacob Cohen, May 6, 1971. The computations of probability are his; the racial statistics come directly from the Survey.

but were also kept out of the pool of eligibles for future examinations for the position of Principal. The fact that the process involved a series of examinations at different times in his or her career served to magnify the statistical differences between the white and non-white pass-fail rates, so stated Judge Mansfield.

Dr. Jacob Cohen, an expert in the field of statistics testified that on the basis of a large sample (5,910 out of 6,201 candidates), the test results were especially valuable and formed a sound basis for drawing valid statistical conclusions as the difference in passing rates between the ethnic groups involved. In analyzing the statistics he used the Chi-Square Test (Yates-corrected), which is a method using formulas generally accepted by statistical experts to determine whether an observed difference in any given sample is greater than that which would be expected on the basis of mere chance or probability. Dr. Cohen found with respect to the aggregate test that by "the Chi-Square (Yates-corrected) statistical test, the probability of the difference being a chance result not related to the factor of race is determined as <u>less than one in one billion</u>." (Emphasis added)

Ethnic Comparison with other Urban School Systems

In reaching a decision in the Chance-Mercado case, Judge Mansfield indicated that he was also impressed with the revealing statistics comparing the percentage of Black and Puerto Rican Principals to white Principals in the five largest school systems in the country (see table 10).

TABLE 10

ETHNIC SURVEY OF PRINCIPALS IN THE FIVE LARGEST U.S. SCHOOL SYSTEMS

City	Total No. of Principals	% Black	% Puerto Rican	% Black and Puerto Rican
Detroit	281	16.7	---	16.7
Phila.	267	16.7	---	16.7
Los Angeles	1,012	8.0	1.7	9.7
Chicago	479	6.9	---	6.9
New York	862	1.3	0.1	1.4

SOURCE: Chance v. Board of Education, court papers filed with Judge Mansfield.

These figures submitted to the court dated June 11, 1971 and accepted by the defendants, clearly showed New York City to have by far the lowest percentage of minority personnel. The next lowest listed was Chicago which showed almost five times the percentage of minority principals found

in New York City. Statistics presented to the court also showed similar imbalance with respect to minority assistant principals (see table 11).

TABLE 11

ETHNIC SURVEY OF ASSISTANT PRINCIPALS IN THE FIVE LARGEST U.S. SCHOOL SYSTEMS

City	Total No. of Asst. Prin.(s)	% Black	% Puerto Rican	% Black and Puerto Rican
Detroit	360	24.7	0.2	24.9
Phila.	225	37.0	---	37.0
Los Angeles	---	---	---	---
Chicago	714	32.5	---	32.5
New York	1,610	7.0	0.2	7.2

SOURCE: Chance v. Board of Education, court papers filed with Judge Mansfield.

Relationship between % of Black and Puerto Rican Supervisors and % of Black and Puerto Rican Students

The plaintiffs also argued that discrimination may be inferred from the fact that the percentage of Black and Puerto Rican Principals and Assistant Principals in New York City schools in 1970-71 (1.4% and 7.2%, respectively) was far below the percentage of the total student body who were Black and Puerto Rican (55.8%) and when compared with similar figures for the five largest school systems in the country

constituted not only the lowest minority representation in the supervisory ranks, but also the lowest ratio of such minority group supervisors to minority group students.

Judge Mansfield rejected that contention. He stated that supervisors are drawn from the pool of qualified teachers, most of whom attended elementary and high school long ago, and not from present-day students. He stated further:

> Undoubtedly the low number of minority teachers eligible to take the supervisory examinations prescribed by the Board has been due in part to the fact that the percentage of minority students who 10 or 15 years ago went on to college and qualified for a teaching career, and thus provided the source of today's minority teachers, was much smaller than the number of white students following such a course, with the result that a larger pool of qualified white graduates entered the teaching profession.

and Mansfield continues,

> . . . the minority student population in New York City has increased during the same period, with the effect of increasing the racial imbalance between teachers and students.

He concluded that current efforts to promote higher educational opportunities for minority groups will not produce qualified teachers for some time. Nevertheless, the percentage ratios of minority supervisors as compared to minority student body had no value with respect to the question before the court, which was whether New York City's

examination system discriminated against minority candidates who have already qualified as licensed teachers.

Comparison between Percentage of Black and Puerto Rican Members of General Population of New York City and Percentage of Black and Puerto Rican Supervisors

The court was also unimpressed with arguments presented comparing the percentage of Black and Puerto Rican members of the general New York City population and the percentage of Black and Puerto Rican Principals and Assistant Principals found in the City's total school supervisory personnel.

Judge Mansfield commented that:

> Statistical comparisons to the general racial population of the community may be relevant in determining whether there is discrimination in job opportunities that are supposed to be open to the general public, . . . But we are here dealing with candidates who must meet preliminary eligibility requirements as to education and experience that are not possessed by most of the general population. Where the education of our children is at stake, such insistence upon the highest possible quality in our teachers is a salutary and lawful objective, provided it does not result in racial discrimination between candidates who are otherwise eligible, which is the case here.

The evidence submitted by plaintiffs, with the exception spelled out above, established to the court's satisfaction that the examinations prepared and administered by the Board of Examiners for the licensing of supervisory

personnel in New York City schools did have "the de facto effect of discriminating significantly and substantially against qualified Black and Puerto Rican applicants."

De Facto Discrimination Alone not Sufficient

However, Judge Mansfield stated that the existence of such de facto discrimination, standing alone, would not necessarily entitle plaintiffs to relief. He disclosed that the Constitution does not require that minority candidates be licensed as supervisors in the same proportion as white candidates. He further stated that:

> The goal of the examination procedures should be to provide the best qualified supervisors, regardless of their race, and if the examinations appear reasonably constructive to measure knowledge, skills and abilities essential to a particular position, they should not be nullified because of a de facto discriminatory impact.

Content Validity v. Predictive Validity

The court next moved to the issue of the validity of the examinations. The defendants and plaintiffs disagreed as to which side should bear the burden of proving that the examinations were job-related. Judge Mansfield ruled that since the plaintiffs successfully showed that the examinations resulted in substantial discrimination against a minority racial group qualified to take them, the Board of

Examiners be given the burden to prove "that the examinations are required to measure abilities essential to performance of the supervisory positions for which they are given."

It seems to be generally accepted, particularly as a result of the Supreme Court ruling in Griggs v. Duke Power Co.,[10] that before an examination can be recognized as a reliable instrument for measuring the fitness and ability of a candidate to perform tasks demanded by a given position, the examination must be validated, i.e., shown to be reasonably capable of measuring what it purports to measure. Experts disclose that the first step toward this basic objective is to insure that the subject matter of the examination will elicit from the candidate information that is relevant to the job for which it is given. If so, it is said to have "content validity."

It is generally accepted that in constructing an examination that will have "content validity," the preferred course is first to have an "empirical" analysis made of the position for which it is given, usually by experts or professionals in the field. Such an analysis requires a study to be made of the duties of the job, of the performance by those already occupying it, and of the elements, aspects

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[10] Griggs et al., v. Duke Power Company, No. C-210-G-66, December 23, 1970.

and characteristics that make for successful performance. Questions are then formulated, selective procedures established, and criteria prepared for examiners that should elicit information enabling them to measure these characteristics, skills and proficiencies in a candidate and determine his capacity to do the job satisfactorily.

Dr. Robert Thorndike, Professor of Psychology and Education at Columbia Teachers College and a testing consultant to the Board of Examiners, has observed:

> Whenever a test is being tried for selection of personnel for some job specialty, it is most desirable that it be validated empirically. Experimental evidence is called for to show that the test is in fact effective in discriminating between those who are and those who are not successful in a particular job. Though it may be necessary under the press of an emergency to rely upon the professional judgment of the psychologist to establish the value of a test for personnel selection, this must be recognized as a stop-gap.[11]

Dr. Thorndike is of the opinion that content validity is generally assessed in terms of how well the examination task matches specific parts of the performance required of the job and how important those parts are to the total performance.

"Predictive validity," on the other hand, is an examination's ability to identify who will perform well on the job. This type of validity, experts say, usually is evaluated

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[11] R. L. Thorndike and E. Hagen, Measurement and Evaluation in Psychology and Education, January 1, 1971, pp. 616-41.

by empirical studies to determine whether examination scores are closely related to appropriate measures of success on the job.

Distinctions have been made with respect to validity between a proficiency test and an aptitude test. Concerning supervisory examinations in the New York City school system, Dr. Thornkike's position has been that because a proficiency test assesses the extent to which an applicant has certain specific skills or knowledge required on a job, it is usually validated by a "content validity" study. Other testing experts, however, state that "predictive validity" studies are more appropriate for proficiency tests as well as aptitude tests. Dr. Aaron Carton, Professor of Education at Stony Brook State College has stated:

> Without studies of predictive validity (i.e., assessments as to how well the tests select individuals who function successfully on the job) the very assumptions as to what constitutes expertise in any given field cannot be fully tested.[12]

In Chance-Mercado v. Board of Examiners both the defendants and the plaintiffs had opposing views with respect to the validity of the examinations given for supervisory positions in the school system. Plaintiffs argued that "content validity" was of limited value in selecting

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[12]Affidavit of Dr. Aaron Carton, October 25, 1970.

supervisors because of the difficulties faced in preparing tests that fairly sample the job and accurately predict a candidate's performance. They further argued that examinations for such positions are useful only if they have "predictive validity," since content validity is primarily relevant for the purpose of determining whether a candidate has learned a defined body of knowledge rather than for the purpose of determining how he will use and apply that knowledge on the job.

The Board of Examiners took the view that "content validity" was more important in determining a candidate's proficiency or capacity to perform the duties of a Principal, and that "predictive validity" should be "de-emphasized" in judging the utility of such tests "because predictive validity is more relevant to aptitude for learning than to achievement or proficiency for satisfactory performance on the job."

Structure of a Typical Supervisory Exam

A typical supervisory examination at the time of the Mansfield Decision consisted of two parts: (1) a written test, and (2) an oral interview. The percentage weight attributed to each part of the examination varied according to

the supervisory position involved. Generally, forty-five to fifty percent was accorded to the written examination, twenty-five to thirty percent to the oral examination and another twenty-five to thirty percent to an appraisal of the candidate's training and experience, record, written English, and physical and medical condition. At the time of the court case, it was disclosed by officials of the Board of Examiners that examinations for Principals of Day Elementary Schools were weighted fifty percent for the written part and fifty percent for the oral interview with no weight apparently given to the other factors mentioned above.

The written test in the past had usually consisted of an essay portion and a short-answer section, the latter usually consisted of a series of approximately 200 multiple choice questions, each of which required an answer-number to be selected and registered by the candidate on a separate answer sheet. The oral interview was conducted by a committee of three examiners. It usually consisted of a hypothetical problem situation that might be encountered by a Principal or supervisor in the course of administration (e.g., problem in human relations, teacher training, or administration of a program) followed by questions to which he

or she responded orally at some length. The committee then evaluated the candidate's speech, grammar, clarity of expression, comprehension of the problem, definiteness and practicality of his or her proposals, soundness of judgment, ability to present ideas and meet challenges, poise, courtesy and similar qualities. More recently, (between 1968-1970) the examination for Principal was changed to consist of only an essay type test, with the short-answer portion deleted, primarily because it was largely a matter of memory. However, the short-answer section was retained in most written examinations for Assistant Principals.

The Board of Examiners' Argument

The Board of Examiners contended that its examinations were "valid, reliable and objective." It further asserted that for each examination given, it had obtained from the Board of Education a statement of the duties of the position for which the examination was to be given. According to Board of Education officials, a committee or panel of experts were assembled, after the duties of the position were established, to specify those responsibilities considered most significant. Representatives of the Board of Examiners stated that well known interested educators and lay persons

were consulted with respect to the qualities for which a candidate was to be tested. With the aid of those consultants, the Board of Examiners' staff constructed questions designed to elicit the knowledge and skills required of a candidate.

To support its position, the Board of Examiners submitted affidavits of several respected experts in the field of educational testing. Examples of two such statements follow:

> In general, the Board of Examiners appears to have made a conscientious and informed attempt to develop test tasks that do correspond to selected ones of the specifications set forth by the supervisory persons who set out the requirements for the job.[13]

> The approach used by the Board of Examiners in determining the validity of relevance of its tests consists essentially of a strategy which relies on the judgments of experts and consensus among them as to what constitutes an appropriate test item.[14]

Decision

Judge Mansfield indicated in his decision that the Board of Examiners' methods and procedures as described, seemed reasonable enough. However, the Judge found a fatal weakness in the Board of Examiners' system. The weakness,

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[13]Affidavit of Dr. Robert L. Thorndike, October 9, 1970.

[14]Affidavit of Dr. Aaron Carton, October 25, 1970.

as stated, was found in the methods used by the Board to implement the techniques and procedures adopted in principle and approved by their testing experts. Judge Mansfield found that, "Despite its professed aims the Board has not in practice taken sufficient steps to insure that its examinations will be valid as to content, much less to predictiveness." As examples of this flaw Judge Mansfield cited instances where "experts" or "well known interested lay persons" were supposedly consulted for advice on qualities being tested for in the construction of an examination for Elementary School Principal, which was given on November 3, 1970. Some of the named consultants submitted affidavits to the effect that the meeting had not been called for the purpose of obtaining views on the qualities to be tested or to discuss appropriate selection criteria, but for other purposes. One person, Mr. Peter J. Strauss, Member of Community School Board No. 2 stated:

> It is my recollection of the meeting that the ensuing discussion of the qualities to be sought in a candidate was initiated by the consultants, not by Mr. Rockowitz or any other representative of the Board of Examiners. Many of us expressed our dissatisfaction with the adequacy and relevance of the qualities which the Board of Examiners was apparently intending to test for, based on the established 'duties of the position.' We indicated that in our view it was essential to test for

> qualities which traditionally have never been considered by the Board of Examiners in examining principals.[15]

Mr. Strauss stated further that no conclusion, consensus or agreement was reached between the consultants present at the meeting and the Board of Examiners. No follow-up meeting was ever held.

Furthermore, Harvey B. Scribner, then Chancellor of the New York City school system, never shared the Board of Examiners' confidence in the validity of its examinations. In a memorandum to the Board of Education dated October 13, 1970, Dr. Scribner noted that he was "pressed to evaluate whether the present examination and licensing system, which dictates specific limitations of employment and promotion of staff for the public schools, is a help or a hardship [in the efforts of community boards to operate]. . . ." He recommended that in lieu of current employment practices the Board adopt New York State certification, plus such criteria as each community board might prescribe for those to be selected by it, as the minimum requirement for employment in New York City public schools. He concluded:

> For the reasons outlined in this position paper, my position with regard to the Chance and Mercado case is that I prefer not to defend myself against the action. To do so would require that I both violate my own

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[15]Affidavit of Peter J. Strauss, November 4, 1970.

> professional beliefs and defend a system of personnel selection and promotion which I no longer believe to be workable. We are facing a future in education which leaves no alternative to the selection of the most creative teachers; the most talented supervisors; the most able principals and other administrators who possess the highest level of leadership qualities possible from wherever they may be found and as are available at any given time.

The court finally ruled as follows:

> Reluctant as we are to invade a profession characterized by an expertise not shared by us, we must conclude on the record before us that while the Board has adopted procedures designed for content validity, it does not appear in practice to have achieved this goal.

As a result the court issued a preliminary injunction restraining the Board of Examiners from (1) conducting further examinations of the type found to be unconstitutionally discriminatory against Blacks and Puerto Ricans, and (2) promulgating eligible lists on the basis of such examination procedures. Thus, for the first time in over seventy years, the solid control held by the Board of Examiners over who becomes a supervisor in the New York City school system was broken.

Special Circular No. 30

As a result of the Chance-Mercado Decision, the school system had to produce a temporary procedure for the assignment of supervisors to vacant positions within the

system. On October 25, 1972, Chancellor Harvey B. Scribner issued Special Circular No. 30 entitled, Regulations Governing the Assignment of Acting Supervisors. While the court order was in effect no permanent supervisory positions were made, instead persons possessing appropriate state certification or meeting eligibility requirements for the most recent appropriate supervisory examination were eligible for appointment as Acting Supervisors.

The court order has been modified a number of times since the original order of July 14, 1971. However, the regulations governing supervisory appointments as described in Special Circular 30, remain the procedure by which a candidate is assigned to a supervisory position in the New York City public school system.

Conclusion

Author, David Rogers was quoted as having said, "The Board of Examiners is the one institution that would have to be radically changed for any meaningful reform such as decentralization and performance budgeting to be effective." There is convincing evidence that Rogers' assessment of the Board of Examiners is equally true with respect to affirmative action. It is reasonable to state that

no meaningful Program of Affirmative Action within the Board of Education can be implemented without radical changes in the Board of Examiner's selection process.

This chapter has described how the court has mandated major changes in that selection process as it pertained to supervisors. As a result of the court mandated changes, the system has already experienced appreciable increases in the percentage of minority supervisors in the school system. However, few such changes have occurred with respect to the selection process for teachers. Consequently, the New York City school system has the lowest percentage of minority teachers of any major school system in the country.

It is hoped that the New York City Board of Education will recognize the significance of the precedent established in the Chance case and voluntarily adopt an internal affirmative action program. It can be reasonably assumed, however, that the failure on the part of the Board of Education to voluntarily adopt an affirmative action program for its employees will eventually result in additional court mandated affirmative action requirements.

Ironically, the Board of Education does have an equal opportunity policy and affirmative action program for the contractors, vendors and suppliers who provide the

school system with the necessary goods and services to function. School officials estimated that the cost for such goods and services amount to over a half billion dollars per year and produce thousands of jobs. In the following chapter we will explore the Board of Education's contract compliance program and its relationship to the overall concept of affirmative action.

CHAPTER IV

AFFIRMATIVE ACTION THRU CONTRACT COMPLIANCE

Introduction

The institutions of American education, historically, have represented both opportunities and obstacles for the growth and development of non-white communities. For many years teaching represented the one major "professional" area where Blacks were accepted, at least on a conditional basis. However, the conditions of Black involvement in education have been highlighted by the limitations of assignments in segregated schools and the virtual exclusion from key administrative and policy making roles. A recent survey of the number of Black professionals now in key administrative positions and serving on the boards of the nation's schools indicates that some progress has been made. On the other hand, the long time exclusion of Blacks and other minorities from positions of power and authority in education has left the leadership with the tremendous task of understanding and dismantling, not just those practices which are overtly racist, but also those that are hidden within the complexities

of the institutions.

It is possible to point to some areas of public education today and talk about progress with regard to equal employment opportunity. However, the extent of participation by Black and other minority groups in the "business" of education* is, at best, discouraging in the context of its importance to both the economic and political growth of Black communities.

Systematic inquiry into the extent of Black participation in the businesses related to providing goods and services to public schools has been almost non-existent. Further, political action aimed at forcing public schools to respond equitably to Black communities has, for the most part, addressed the issue of Black participation in the business of education in only a very limited fashion. Starting about 1963, civil rights organizations, such as the Urban League, CORE, and the NAACP, began to make a number of demands related to school construction. Not only did the civil rights workers struggle to prevent the construction of

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*The "business" of education can be defined as those functions in a school system which are non-pedagogical and which provide the many goods and services necessary to sustain the system. It includes the contractors, vendors and suppliers who service the school system.

schools which were destined to become segregated, but they also lobbied aggressively for the employment of Blacks and other minorities in the various skilled trades involved in construction projects using public funds. These political actions were aimed principally at getting jobs for Blacks and other minorities within the contracting white firms. Partly because of the embryonic state of development of most minority construction firms during those early days, public agencies were not pressed to do business with minority owned firms.

Around 1965, a number of school districts across the country began to appoint Equal Employment Opportunity and Contract Compliance Officers. The establishment of such positions was largely in response to pressures from community groups and the requirements of emergent federal legislation such as the 1964 Civil Rights Act as well as Presidential Executive Order 11246. Many school districts pointed to EEO and Contract Compliance Officers as examples of their commitment to equal opportunity for minorities. However, examination of many such offices suggest that they are, for the most part, examples of symbolic politics. School policies to support the work of EEO and Contract Compliance Officers are, generally, grossly insufficient.

Also, the effectiveness of most contract compliance programs is greatly impaired by the lack of adequate budgets or staffs.

Thus, the range of minority group involvement in the business of providing goods and services to the public education systems of America is extremely limited. The United States Office of Education projected 58.9 million students to be enrolled in classes from kindergarten to post-graduate studies for the 1975-1976 school year. While that projection was 200,000 fewer than last year, the cost of education increased by $11 billion from last year--for a total of $119 billion or eight percent of the Gross National Product in federal, state, local and private money.[1] Most of that money will go into the salaries of 3.06 million teachers and 300,000 non teaching staff members. Of the approximately 8.5 billion spent annually by the nation's school systems to acquire the buildings, books, pencils and paper consumed in educating the nation's school children, only a microscopic percentage can be identified as going to Black or other minority group firms.[2]

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[1] The New York Times, September 3, 1975, p. 33.

[2] Black Enterprise, "The Cost of Education," September, 1972, p. 54.

Still, the concepts of community control, strong equal opportunity and contract compliance programs are changing that picture in a few cities. And while Black involvement in the business aspect of education is embryonic and, therefore, difficult to evaluate, both the need and the opportunity to broaden the involvement seems clear.

Contract Compliance and the New York City School System

The New York City Board of Education is a major consumer of goods and services, provided by a variety of private businesses, vendors and contractors. Some examples of the Board's role as a major consumer of goods and services are as follows:

> During the fiscal year 1973-1974 construction was completed on seventy-one capital school projects at a total cost of $154,423,806.[3]
>
> In fiscal year 1973-1974 construction contracts were awarded for sixty-four capital school projects at a cost of $123,320,840.90.[4]
>
> Capital school construction contracts at a cost of $29,634,531 were also awarded for modernizations, air

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[3] Board of Education, City of New York, Division of School Buildings, Report on Capital Construction Program for Fiscal Year 1973-74.

[4] Ibid.

> pollution, renovations of kitchens, maintenance of school buildings and security installations.[5]
>
> As of June 30, 1974, the Bureau of Construction of the Board, had under its supervision the construction of ninety-six school projects costing $489,427,414.[6]
>
> During the fiscal year 1973-1974 designs were completed for 120 projects, with an estimated value of $17,368,989. Twenty-three projects estimated at $134,744,100, were completed by private Architects. Sixteen projects, with an estimated value of $9,809.889, were completed by private Engineers.[7]

The grand total of construction contract awards for the fiscal year 1973-1974 was in the amount of $152,955,371. For the fiscal year 1972-1973, the amount was $153,118,576.45 (see tables 12 and 13).

The Bureau of Maintenance of the Board of Education estimate that over 5,000 contracts involving maintenance and repair work are awarded annually by the Board.

Mr. Walter Kraus, Director of Supportive Services for the Board, estimates that the New York City Board of Education spends over $350 million annually for supplies and related services to maintain the school system. Included in those services are such costs as:

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[5] Ibid.

[6] Ibid.

[7] Ibid.

TABLE 12

CONSTRUCTION CONTRACT AWARDS
Summary - Fiscal Year 1972-1973

TYPE OF PROJECT	NUMBER OF PROJECTS	VALUE	ADDED PUPIL CAPACITY
New Buildings	16	$103,063,022.	20,293
New Buildings (Foundations)	6	6,606,915.	- - -
Additions	5	12,514,079.	1,479
Modernizations	12	6,148,832.98	- - -
Temporaries	7	1,859,768.	1,820
Portable Bldgs.	1	102,790.	- - -
Conversion	1	399,400.	- - -
Playgrounds	6	1,611,620.50	- - -
Flexible Shops	3	1,002,333.	- - -
Shop Equipment	7	1,211,981.50	- - -
Miscellaneous	1	220,000.	- - -
Bureau of Maintenance			
E-643 Projects (Intrusion Alarms, Modernization & Reconstruction)	-	1,881,113.08	- - -
E-1419 Projects (Air Pollution Control Equip.)	-	375,303.	- - -
E-1580 (Renovation of Kitchens)	-	553,759.	- - -
E-1749 (Renovation of School Buildings & Playgrounds)	-	15,278,600.39	- - -
Miscellaneous Awards			
E-1 Surveys & Borings	-	289,059.	- - -
TOTAL	65	$153,118,576.45	23,592

SOURCE: Division of School Buildings, New York City Board of Education.

TABLE 13

CONSTRUCTION CONTRACT AWARDS
Summary - Fiscal Year 1973-1974

TYPE OF PROJECT	NUMBER OF PROJECTS	VALUE	ADDED PUPIL CAPACITY
New Buildings	14	$102,362,043.00	20,809
New Buildings (Foundations)	2	1,261,000.00	- - -
Additions	1	587,969.00	- - -
Modernizations	20	10,278,976.29	- - -
Temporaries	1	274,592.00	- - -
Portable Buildings Relocation	1	44,365.00	- - -
Addition & Modernization (Foundation)	1	193,000.00	- - -
Playgrounds	1	193,200.00	- - -
Athletic Fields	4	2,713,985.00	- - -
Shop Equipment	10	1,203,966.30	- - -
Miscellaneous	4	1,102,147.00	- - -
E.C.C. New Building	2	1,532,859.00	240
Site Improvements	2	1,091,900.00	- - -
Pumping Station	1	65,900.00	- - -
Bureau of Maintenance			
E-643 Projects (Modernization & Reconstruction)	94	1,362,402.00	- - -
E-1419 Projects (Air Pollution Control Equip.)	159	3,941,625.00	- - -
E-1580 (Renovation of Kitchens)	23	254,612.00	- - -
E-1749 (Renovation of School Buildings & Playgrounds)	-	22,425,831.00	- - -
E-1750 (Security Installation)	336	1,650,061.00	- - -
Miscellaneous Awards			
Surveys & Borings	1	414,937.50	- - -
GRAND TOTAL	677	$152,955,371.09	21,049

SOURCE: Division of School Buildings, New York City Board of Education.

Transportation - - - - - - - $134 million
Fuel supply - - - - - - - - - $ 21 million
Food and lunch supplies - - $ 47 million

There are additional contracts for textbooks, audio-visual materials, electric typewriters, office machines, microscopes and every other imaginable piece of equipment necessary to maintain the system.

The vast majority of these supplies and related services are provided through contractual arrangements with private contractors and vendors. Combined, these contractors and vendors employ thousands of workers throughout the country.

Thus the establishment of a strong equal employment program by the New York City Board of Education would play a significant role in enhancing job opportunities for Black and other minorities as both workers and entrepreneurs.

Contract Compliance Program

Recognizing the need to expand equal employment opportunity beyond the stage of non-discrimination, the Board of Education on May 22, 1968 adopted resolutions which established its Contract Compliance Policy. Following that action, the Board on February 19, 1969 established the Office of Contract Compliance and appointed a Contract

Compliance Officer, effective March 15, 1969. On April 16, 1969, the Board, on the recommendation of the Compliance Officer, amended its resolutions on contract compliance for the second time, resulting in what was thought to be a stronger policy. The principal features of the contract compliance procedure were as follows:

Pre-award conference

All apparent low bidders are required to attend a pre-award conference. The purpose of the conference is to acquaint the bidders with the statutory and contractual requirements of the Board's Equal Employment Opportunity Program.

Program of affirmative action

The submission of an acceptable program of affirmative action (PAA) is required of all low bidders prior to the award of contract. The PAA must describe specific steps a contractor or vendor has taken or intends to take to provide minority group workers with equal opportunity in training programs, journeymen recruitment, and all other aspects of employment. The steps described must satisfy the Board that minority group members will be employed in all trades and categories during all phases of the contract.

The Contract Compliance Officer is the judge of the acceptability of the PAA. The low bidder's PAA must be submitted to the Compliance Officer within seven days after the pre-award conference. If the low bidder fails to submit an acceptable PAA within the seven days, the Compliance Officer may recommend that the low bid be rejected, the amount of the bid deposit be forfeited, and that the low bidder be disqualified from bidding on Board of Education projects for one year.

Responsibility of prime contractor

Prime contractors are responsible for the compliance of all subcontractors who also must submit acceptable PAA's to the Compliance Officer prior to their approval to work.

Monthly field reports

Monthly workforce reports, giving the ethnic and racial breakdown of on-site workforces by job categories are required of all contractors and subcontractors working on school construction sites.

Compliance Inspection Report

All Board contractors, subcontractors and vendors

are required to submit a statistical report showing the ethnic and racial breakdown of the firm's entire workforce at least semi-annually.

Compliance review meeting

Periodic compliance review meetings are held with contractors or vendors to review past and present compliance performance and to gauge the rate of progress and make recommendations for improvements where necessary.

Additional compliance machinery

The Board of Education's project superintendent, responsible for each individual school construction site, is required to maintain a daily log showing the racial and ethnic background of each worker on site. The daily data is combined to form a monthly ethnic survey which is submitted to the Contract Compliance Officer. From this information a summary sheet is compiled showing the total percentages of minority participation in each job category each month.

On-the-job training

On February 18, 1970, the Board adopted a resolution, recommended by the Compliance Officer, requiring all

contractors involved in new construction and major modernization work, to participate in an on-the-job training program for minority group workers. The program became effective May 1, 1970. It was the first such required program in the City of New York.

On December 10, 1970, an agreement between the New York Building and Construction Industry Board of Urban Affairs Fund, the State of New York and the City of New York, was reached regarding city-wide on-the-job training. The agreement contained many inequities. Therefore, it was the recommendation of the Compliance Officer that the Board of Education not become signatory to the Plan, but continue to operate under its own policy adopted February 18, 1970 (see appendix 1). Subsequently, the Board did decide to become a participant, but not signatory, to the New York Plan. As a result of its participation, dozens of unskilled minority workers were trained as skilled workers on school sites as a condition of the contract.

Another significant policy change recommended by the Compliance Officer and adopted by the Board on April 23, 1970, was the discontinuance of bid, performance and payment bonds for construction, modernization, repair work and maintenance work where the estimated cost of the work was

$50,000 or less. The primary purpose of this policy was to provide more opportunities for Black and Puerto Rican contractors to bid on school work in this area (see appendix 2).

New revisions

Effective January 2, 1974, the Instructions to Bidders was amended for the third time, again on the recommendation of the Contract Compliance Officer. The most significant change in the contractor's requirements for equal opportunity was the insertion of specific goals and time tables as part of the contract. The contractors and their subcontractors were now required to hire minority group construction workers in accordance with specific goals and time tables, by trades, spelled out in the contract documents (see appendix 3). The document stated, "At a minimum, on or before July 1, 1978 contractors shall make a good faith effort to employ minority journeymen in each building and construction trade in approximately proportional representation as the percentage of minorities in the population of the City of New York."

Also, for the first time, prime contractors were required to submit "Written evidence or other proof which

shows that minority subcontractors have been solicited and given an equal opportunity to submit proposals and that such proposals have been given equal consideration for award." The Board's Contract Compliance Officer was responsible for maintaining an active list of qualified or qualifiable minority contractors.

Weaknesses of the Contract Compliance Program

On paper the New York City school system appeared to have had one of the nation's strongest contract compliance programs. However, it was not until September, 1970, with the appointment of Harvey B. Scribner as Chancellor, that the compliance program became effective. Prior to Dr. Scribner's appointment, the program suffered from bureaucratic hostility, inadequate priorities, as well as insufficient staff and other resources necessary to conduct compliance enforcement activities with maximum effectiveness. For example, while most New York City central Board of Education programs originate from central Board headquarters, located at 110 Livingston Street, Brooklyn, the Office of Contract Compliance was physically located within the Office of School Buildings* in Long Island City,

*The Office of School Buildings is the unit within

a considerable distance from the seat of power at 110 Livingston Street. The failure of the Board or the Superintendent of Schools to provide sufficient support and resources for contract compliance enforcement and the subordinate position in which the office was placed in the agency's hierarchy was, undoubtedly, less a result of a lack of understanding of what was necessary for effective compliance enforcement, but more a reflection of the deeper problem of misordered Board priorities in which equal employment opportunity was relegated to a position of secondary importance. When such a situation exists with respect to any program pertaining to equal employment opportunity or contract compliance, the strongest policy statement or compliance procedure is meaningless. This was, in effect, the position of the New York City public school system's contract compliance program in its early beginning.

During that period the school system had three different Superintendents of Schools.[8] Even though the

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the school system responsible for the construction and maintenance of all school buildings and is located at 28-11 Bridge Plaza North, Long Island City, New York.

[8]Dr. Bernard Donovan; Dr. Nathan Brown (acting); and Mr. Irving Anker (acting).

Contract Compliance Officer was directly responsible to the Superintendent of Schools, records of the Contract Compliance Officer indicated that little meaningful support was given by any of the three Superintendents serving during that period.

This lack of meaningful support from one of the Superintendents is illustrated in a letter written to him by the Contract Compliance Officer on September 10, 1969, congratulating him on his appointment and pointing out to him some of the problems facing the Board's Contract Compliance Program. Part of that letter was as follows:

> . . . it is imperative that our program function in an affirmative, progressive, and meaningful manner. The program can only function in the manner described, if it is given the full support of the Members of the Board, the Superintendent of Schools, and all other Board of Education personnel whose function relates in any manner to the Office of Contract Compliance. I regretfully submit that after six (6) months in office and considerable discussions with various Board of Education personnel, I found that very few persons were cognizant of the establishment of the Office of Contract Compliance, and little understanding of the function of such office was had by the few persons that were aware.
> As of this date my office has not yet been budgeted; we have been unable to acquire the necessary staff to adequately carry out our responsibilities; and to my knowledge, no direct line of responsibility for this office has been firmly established within the school system. (See appendix 4.)

The records indicate that although the Superintendent of Schools responded to the Contract Compliance Officer's letter, no budget for the Office was ever established under his administration, nor was the staff increased. In April of 1970, that Superintendent retired and was replaced by another Superintendent (acting) appointed from within the school system ranks.

The record further shows that on May 28, 1970, the Compliance Officer, at the request of the Board, submitted his first progress report to the newly appointed Acting Superintendent. Again, the Contract Compliance Officer spelled out the weaknesses of the program to the new superintendent and requested support. The highlights of the report were as follows:

> Administratively we have found that the Office of Contract Compliance appears to be left out of the mainstream of Board of Education activities. With the exception of the Office of School Buildings, few if any, other divisions, bureaus, etc., are aware of the existence of this office and more important, of its responsibilities. We have failed to find the Office of Contract Compliance listed in the official Board of Education directory or located on any Board of Education organizational chart where an explanation of its function and authority is defined. We recommend that this situation be corrected as quickly as possible. We also recommend that regular meetings be scheduled between the Acting Superintendent or Chancellor and the Compliance Officer, preferably once monthly.

There is no record of any response from the Superintendent of Schools or his aids to the Contract Compliance Officer's request for support of the program.

The First Chancellor: A Commitment to Change

Harvey B. Scribner was appointed Chancellor of the New York City public school system on September 1, 1970. The position of Chancellor was established by the state legislature as part of the Decentralization Law of 1969, and replaced the position of Superintendent of Schools.

On September 22, 1970, the Contract Compliance Officer wrote Dr. Scribner introducing himself and describing the function of the Office of Contract Compliance. Dr. Scribner responded on September 25, 1970, with a memo to the Contract Compliance Officer which concluded, ". . . and I want you to know you are welcome to see or contact me at any time."

Evidence of the Chancellor's commitment was confirmed a few days later by another letter from him dated September 29, 1970, authorizing the Contract Compliance Officer to begin working on a plan for the implementation of the Board's on-the-job training requirement (see appendix 5). This was followed by a meeting of the

Chancellor and the Contract Compliance Officer in the Chancellor's office on October 8, 1970.

Shortly after the meeting of October 8, the Contract Compliance Officer was asked to join Dr. Scribner's personal staff, which consisted of an Executive Assistant, a legal Counsel, and six other Special Assistants who formed the Chancellor's inner cabinet. This cabinet, in effect, was the Chancellor's chief advisory committee on all matters pertaining to the school system. Such meaningful commitment and support from the top is perhaps the most important single act an administrator can do to effectuate an affirmative action program.

In the New York City Board of Education, as in most other agencies, institutions or corporations, there is one location or address that is considered the seat of power for the organization. For the school system that location is the 10th and 11th floors of 110 Livingston Street, Brooklyn, New York. The 11th floor houses the Members of the Board and staff. The 10th floor houses the offices of the Chancellor and staff and is indeed considered by the system as the official seat of power for the school system. It was to this location that Chancellor Scribner directed that the Office of Contract Compliance be

relocated. Thus that office was removed from its location in Long Island City where two-thirds of the school system never knew it existed, to 110 Livingston Street, 10th floor, where the entire school staff would have to notice it.

By relocating the Contract Compliance Office and staff to 110 Livingston Street, 10th floor, the program overcame three major problems which the United States Civil Rights Commission have cited as historically hindering most contract compliance and affirmative action programs. That is accessibility, visibility, and program priority via proximity to the Chief Administrator.

Subsequent to the relocation, additional staff was assigned to the office. Finally as a result of such visible showing of support by the Chancellor, the Contract Compliance Officer was consulted on all matters pertaining to equal employment opportunity and had a direct voice in such matters whether relating to internal or external situations. This distinction must be made because, up to this time, the Board of Education's Affirmative Action Program was an external program only. Its policies, regulations, and procedures were specifically aimed at those outside organizations with which the school system contracted for goods and services. There was no formal internal

affirmative action program within the Board of Education. The Chancellor was later to resolve that situation by redesignating the Office of Contract Compliance as the Office of Equal Opportunity and expanding its authority to include matters of internal equal opportunity as well as external matters (see chapter V).

During Chancellor Scribner's administration, many Black and Puerto Rican professionals were assigned to supervisory positions seldom if ever previously held by minorities. For example, the first Black was appointed as Executive Director of Personnel. Another Black was appointed to the high level position of Chief Administrator of Career Education. A Puerto Rican was named Chief Administrator of Bilingual Education. An ex-high-ranking Black police officer was appointed Chief Administrator of School Safety. The first Puerto Rican High School Principal was appointed and the first Black and Puerto Rican Members were appointed to the Board of Examiners on the personal recommendation of the Chancellor.

In addition, the progress made with regard to minority participation in the business of education was at its highest level during this period. The rules and regulations regarding affirmative action requirements by

contractors were vigorously enforced by the Office of Contract Compliance. For the first time in the City of New York, sanctions were imposed on contractors and subcontractors who would not or could not comply with the affirmative action requirements of the Board. After due process, such contractors were declared to be in non-compliance and were ineligible to bid on school work for a period of one year or until released by the Office of Contract Compliance. During this period approximately one hundred and thirty-five prime and subcontractors were classified as being in non-compliance.

Recommendations for Award

Another important procedure of the program is that of the inclusion of the signature of the Compliance Officer to all resolutions recommending award of contract. Without his signature certifying the contractor's approval, the resolution is invalid. This procedure was primarily aimed at reducing resistance among some school officials, to the implementation of the contract compliance program. This procedure is another good example of the kind of control a contract compliance officer or equal opportunity officer should have in order to be effective. This procedure was

the result of a directive by the Chancellor dated October 13, 1971 which was sent to the chief operational school officials involved in contracts.

On Site Inspections and Sanctions

In order to ascertain whether or not contractors are in fact carrying out their affirmative action plans as indicated in their written programs, some type of on-site surveillance is necessary. On school construction sites this on-site surveillance was the responsibility of field inspectors. On occasion, the field inspectors were employed directly by the Board of Education. In other instances, the field inspectors were employed by a private firm which was funded by the City of New York. In any event, any sound contract compliance program must have some method of determining whether or not contractors are living up to their commitments.

In the event the contractors do not live up to their commitments and cannot give a valid reason for their failure, sanctions must be imposed if the program is to have "teeth." As previously stated, approximately one hundred and thirty-five prime and subcontractors were declared ineligible to receive Board of Education contracts

for failure to satisfactorily comply with affirmative action requirements. In some instances, progress payments were withheld until the contractors complied.

The two groups of illustrations presented, show the difficulties encountered by the New York City public school system's Contract Compliance Officer when top level support and priority was lacking, and its accomplishments when such support and priority was evident.

It should be noted that the position taken by Chancellor Harvey Scribner with respect to affirmative action and equal opportunity in the New York City school system was indeed extraordinary when compared with other chief administrators. Reports from the U.S. Commission on Civil Rights (1974) indicate that the chances for successful affirmative action programs are extremely slim without a similar degree of top level support and commitment from the office and staff responsible for the program's implementation.

School Construction and the Building Trades

The Building Trades in New York City have the reputation of being among the most racist institutions in the city. In the early 1960's, the skilled trades, with the

possible exception of carpenters, painters and bricklayers, remained practically lily white. In trades requiring less skill, such as excavators, concrete laborers, and mason tenders, for which many Black and Puero Rican workers could immediately qualify, civil rights leaders accused the unions, in collusion with the contractors and with the "tacit" approval of the city authorities, with restricting their employment to slightly more than a token number. During that period there was also evidence that even where non-white construction workers had union books, they were seldom referred to jobs from the union hiring halls.

The New York City Commission on Human Rights, in a publication entitled, "Bias in the Building Industries," (1963), documented the extent of race discrimination in the Building Trades during the 1960's.

Also, in 1963 the City Commission on Human Rights, as a result of a series of hearings, reported that it found a pattern of exclusion in a substantial portion of the Building and Construction Industry which effectively barred non-whites from participating.

This condition, according to CCHR was a result of the following:

1. The failure of employers to accept their responsibilities to include minorities in their workforce

2. Non-whites seeking union membership, either as apprentices or journeymen, were faced with almost insurmountable barriers

3. The government--at the federal, state and municipal levels--had failed to enforce its laws and regulations barring discrimination.

On July 13, 1963, The New York Times, after reporting on the Mayor's special panel investigating racial discrimination in the Building Trades, commented editorially that:

> Negro participation in the Building Trades is less than two percent, concentrated in the low paying jobs. The high paying jobs, including steamfitters, iron workers, metal lathers and plumbers, are trades pretty much off limits to non-whites.

In March of 1967, the Commission held a follow-up series of hearings to update the findings of 1963. It concluded, as a result of these hearings, that the patterns of exclusion in the Building and Construction Trades Industry persisted, and that the unions and employers continued their discriminatory employment practices, particularly in the same skilled trades which had been previously investigated.

In New York City, according to a survey conducted by the Commission in 1967, the basic construction industry had a labor force in excess of 200,000 journeymen workers who are members of local unions affiliated with eighteen international unions. Black membership was limited almost exclusively to unions representing unskilled or semi-skilled workers. But in the major skilled craft unions--plumbers, sheetmetal workers, metal lathers, steamfitters, iron workers, elevator constructors and operating engineers--which have established some of the highest wage rates in the city, a high degree of minority imbalance continues to exist. In the nine local unions investigated by the Commission, the non-white journeymen constituted less than two percent of the total journeymen membership of approximately 28,000 workers.

A significant finding by the Commission was that, "The Building and Construction Trades cannot maintain high employment without public works and construction projects wholly or partially financed with federal, state and municipal funds."

Engineering News-Record, a leading construction weekly, reported that:

1. Of all new construction projects in the United

States that were on the drawing boards of architects and engineers in April, 1967, approximately forty-three percent were federal, state and municipal public works projects

2. In the New England sector for the same period, almost sixty percent of those new projects were federal, state and municipal public works projects.

The Building and Construction Trades in New York City represent an expanding part of the economy. The capital budget for New York City in 1974-1975 was $1,949,800,000. Of that amount, the Board of Education received $264,900,000.

Compliance by School Contractors

In view of the extensive involvement of the Board of Education with the Building and Construction Trades in New York City, and because of the extremely poor record of the Building Industry to employ non-whites, compliance by construction contractors on school sites became the Office of Contract Compliance's number one priority.

The first step necessary to implement compliance in this area was to conduct a survey of all school construction sites indicating the racial and ethnic breakdown

of all workers by trade. In addition, each prime contractor and his major subcontractors were required to submit ethnic workforce reports of their entire workforce to the Office of Contract Compliance. The original surveys taken in August, 1969, indicated that less than ten percent of the skilled workers on school construction sites were non-white. By December, 1971, the total percentage of minority workers had risen to 19.2 percent. By October 31, 1974, the total percentage had risen to twenty-nine percent. This included above average percentages in most of the skilled trades.

Then Chancellor, Harvey B. Scribner, summed up the Board of Education's Contract Compliance Program in testimony before the New York State Advisory Committee to the United States Commission on Civil Rights on March 9, 1971, when he said the following:

> Over the past year, the Board of Education--which is currently the largest single governmental builder in New York City--has maintained an average of approximately 20 percent minority group employment on school construction work-forces. In the higher-paying trades, such as electricians, plumbers, ironworkers, steamfitters and sheet metal workers, minority group representation during the past year has averaged 11.3 percent. Both of these figures compare favorably with national data, as well as with data from other large cities. These figures also represent substantial, but not yet satisfactory, gains for the Board of Education. . . . Despite these gains, however, more remains to be

> done. Black and Puerto Rican construction workers are still not adequately represented in the construction industry. Because of long-standing traditions and prejudicial customs, Black and Puerto Rican construction workers still find jobs less easy to find then their white counterparts. Until this situation is changed, I intend to press--through the contract compliance program of the Board of Education--for even greater gains.[9]

Conclusion

In addition to employing over 125,000 persons directly, the New York City school system, indirectly, employs thousands of other persons as a result of contracts for goods and services. As such it is equally important that the school system have meaningful affirmative action programs to cover both its internal employment practices as well as the employment practices of the contractors, vendors and suppliers who contract with it, to provide goods and services.

We have seen how, after a somewhat poor start, the Board of Education's Contract Compliance Program developed into a significant program which was responsible for the employment of hundreds of minority workers in every con-

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[9]Written remarks by Dr. Harvey B. Scribner, Chancellor of New York City public schools, before the New York State Advisory Committee to the U.S. Commission on Civil Rights, March 9, 1971, U.S. Customs Court, New York City.

ceivable job category. The Board of Education was particularly proud of the results of its Affirmative Action Program for construction contractors. It saw the percentage of minority construction workers on school construction sites increase from less than 10 percent in 1969 to over 29 percent in 1974.

The success of the program was due mainly to the fact that the Board of Education adopted a strong policy in this area of compliance and that the program received top level support from the Office of the Chancellor.

However, one cannot help but note a degree of hypocrisy on the part of the Board of Education. Though it adopted enforcement procedures for contract compliance with respect to outside contractors, it has failed to adopt similar provisions for monitoring its own internal employment practices. In the following chapter we will discuss the events leading up to the establishment of an Office of Equal Opportunity within the school system and the current status of that office.

CHAPTER V

ESTABLISHMENT OF THE OFFICE OF EQUAL OPPORTUNITY

Introduction

During the middle 1960's as discussed in the preceding chapter, many urban school districts across the country adopted equal employment opportunity policies which were specifically directed at contractors, vendors and suppliers who provided them with goods and services. For example, the Contract Compliance Program adopted by the New York City Board of Education in 1968, with its later amendments, was once described by Black Enterprise as one of the best public school compliance programs in the country.[1] However, a recent survey concluded that few public school districts have voluntarily adopted similar equal employment opportunity policies to govern their internal personnel and employment practices. Noticeable among the major public school districts having external contract compliance require-

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[1] Charles Taylor, "Politics and Policies or are the Public Schools Equal Opportunity Employers," Black Enterprise, September, 1972, p. 18.

ments, but lacking internal equal opportunity or affirmative action programs, is New York City. This chapter will be devoted primarily to an analysis of the efforts by some to establish and implement an internal equal employment opportunity policy for the New York City public school system, and the resistance to such efforts by others from within the system. The analysis will include a review of the background with respect to the establishment of an Office of Equal Opportunity within the school system and some of the events which occurred afterward, which in effect, prevented any meaningful implementation from taking place.

Background

The New York City Board of Education's Contract Compliance Program, from all indications, was highly successful in its efforts to increase job opportunities for Black and other minority employees of contractors, vendors and suppliers doing business with the Board. A review of the Board of Education's organizational structure revealed that no similar mechanism existed to ensure equal job opportunity for Black and other minority employees within the school system. Critical of this apparent double standard on the part of the school board, a number of civil rights

organizations in the early 1970's began applying political pressure to the Board of Education to adopt an internal equal employment opportunity program.

The first positive reaction to efforts to establish an internal program took place, according to school records, in December of 1971. At that time the Contract Compliance Officer of the Board of Education, acting on behalf of some of the concerned civil rights organizations, wrote School Chancellor Harvey Scribner requesting his permission to investigate the possibility of establishing an internal procedure. The Compliance Officer's letter to the Chancellor dated December 3, 1971 stated in part the following:

> As you know, my office is currently responsible for assuring that all contractors, vendors and suppliers . . . comply with Board policy regarding equal employment opportunity. It seems to me equally important that the same assurance of equal opportunity should also apply within the Board of Education. To my knowledge there is no formal procedure or unit within the Board directly responsible for the assurance of equal opportunity. Surely the need for such assurance is intensified by the decision of Judge Mansfield. . . . Do you think that the Contract Compliance Office should be re-defined and expanded to provide this assurance along with its present function? . . .[2]

The Chancellor agreed that the Board should have an internal

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[2]Memorandum from Richard H. Smith to Harvey B. Scribner, dated December 3, 1973, New York City, Board of Education.

equal opportunity program and requested that the Compliance Officer submit his recommendations on the subject. In a confidential memorandum dated December 17, 1971 the Compliance Officer submitted recommendations to the Chancellor regarding the establishment of an office of equal opportunity. The principal recommendation was that the responsibilities of the Office of Contract Compliance be redefined and expanded into an Office of Equal Opportunity with the dual responsibility of not only assuring contract compliance by external contractors, vendors and suppliers, but in addition to monitor the employment and personnel practices of the school system.

In approximately the same time frame that the Compliance Officer's recommendations were submitted, the Economic Development Council (EDC), a private organization consisting of management experts on loan from business, was asked by the Board to study the school system's headquarters function, organization and operation, and to make recommendations for improvements.

In November 1972 EDC completed its organizational study and made recommendations for the reorganization of the top management structure at central headquarters. Included in EDC's recommendations was the proposal of the

Contract Compliance Officer that an Office of Equal Opportunity be established with the combined responsibility of ensuring that the personnel practices of the Board of Education, as well as its contractors, comply with both the letter and the spirit of all equal opportunity legislation or policy. The Office of Equal Opportunity was one of six independent offices recommended to report directly to the Deputy Chancellor.

Former Executive Director of Personnel, Frederick H. Williams,* also concurred with the recommendations of EDC and the Contract Compliance Officer in this matter. Prior to the recommendations for the establishment of an independent Office of Equal Opportunity, all complaints pertaining to allegations of job discrimination within the Board of Education were referred to the Office of Personnel. The Office of Personnel merely acted as a go-between for the City and State Commissions on Human Rights in these cases. It did not investigate or process any such allegations of discrimination.

In a letter to Chancellor Scribner dated January 16, 1973, Mr. Williams requested that all responsibilities

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*Frederick H. Williams was the first Black to be appointed to the position of Executive Director of Personnel.

pertaining to the internal monitoring of school employment practices to "assure that they comply with anti-discrimination laws and guidelines . . ." be assigned to the proposed Office of Equal Opportunity. In a later discussion with Mr. Williams regarding this matter, he disclosed that his primary purpose for recommending that such function be removed from the personnel office was his concern regarding a possible conflict of interest in attempting to monitor his own personnel practices.

Mr. Williams' letter to the Chancellor was a reaffirmation of the proposal to establish a separate Office of Equal Opportunity independent of the Office of Personnel. It was also an attempt to end the debate which occurred among Board Members with regard to placing the responsibility of internal monitoring of the school system's employment practices within the Office of Personnel.

After careful examination of all the proposals relevant to equal employment opportunity and affirmative action, Chancellor Scribner on March 29, 1973 issued Special Circular No. 105, 1972-73.* This Circular entitled, "Office

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*A special circular issued by the Chancellor is a directive to the school staff and is comparable to the issuance of an executive order issued by the Mayor.

of Equal Opportunity" redesignated the Office of Contract Compliance as the Office of Equal Opportunity. It further directed that the new office would maintain its former responsibilities "But in addition, the Office of Equal Opportunity will monitor the employment and personnel practices of the City School District, and make recommendations to the Chancellor in keeping with the objectives of equal opportunity." The Contract Compliance Officer was designated as the administrator of the new office (see appendix 6). Thus, the Office of Equal Opportunity was finally established within the New York City public school system with, what appeared on surface to be, a mandate for the implementation of an internal program of affirmative action.

On October 4, 1973 a post-script action took place when Special Circular No. 20, 1973-74 was issued by the new Chancellor, Irving Anker. This circular officially announced the installment of a complete new headquarters reorganizational structure, and again had the effect of reaffirming the new Office of Equal Opportunity. It stated in part that,

> The plan as described is to become effective as of the date of this circular. . . . The full cooperation of staff in the implementation and evaluation of this new

plan of central organization will be appreciated in the school year ahead.[3]

The implementation of the actions just described, ordinarily would have been enough to firmly establish an Office of Equal Opportunity within the hierarchy of the school system. However, an examination of school records showed that this was not the case. The key as to why this was not the case revolved around a change in the leadership structure of the school system.

New Administration

A review of the history of affirmative action programs and equal employment opportunity offices across the country have shown that, in addition to their general lack of adequate budgets and staffs, such programs and offices are often vulnerable to changes in their organizations' top administration. The New York City public school system was no different in this regard.

On December 21, 1972 Chancellor Scribner called a news conference and read from a prepared statement the following:

> I wish to announce that I intend to leave office upon completion of my contract on June 30, 1973. . . .

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[3]Special Circular No. 20, 1973-74, "Headquarters Reorganization," Board of Education, Office of the Chancellor.

> . . . During my first two years of office, despite controversy and opposition from various special interests favoring the status quo, I enjoyed the general support of the Board. In recent weeks and months, however, it has become increasingly clear to me that some members of the Board seem uncomfortable with the leadership which I provide. . . .[4]

Effective July 1, 1973 the Board appointed Deputy Chancellor Irving Anker to replace Harvey Scribner. The director of the office was unable to schedule a meeting with the new Chancellor to discuss the newly established responsibilities of his office. Having failed on several occasions to reach the Chancellor directly, the director on October 23, 1973 wrote to him outlining some of the areas of responsibility of the Office of Equal Opportunity, and indicated some of the activities already begun by the office. The letter concluded, "I would like to confer further with you on these plans at your earliest convenience." (See appendix 7.) There is no record to show that a response from the new Chancellor or his assistants was made.

On November 30, 1973 the Director of the Office of Equal Opportunity again wrote to Chancellor Anker. This

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[4]Press release issued December 21, 1972, Office of the Chancellor.

time informing him of a request by the New York City Human Rights Commission that the Board of Education's equal opportunity officer and personnel officer attend a conference on equal employment opportunity. The director informed Chancellor Anker that he would attend the conference as the school system's equal opportunity officer. Again there was no response from the Chancellor or his assistants on this matter. The director did, however, receive a copy of a memorandum from the Chancellor to Frank Arricale, the newly appointed Executive Director of Personnel replacing Frederick Williams, dated November 29, 1973. The memorandum recommended to the Board that Mr. Arricale, the new Personnel Director, "be my liaison with the City Commission on Human Rights for matters dealing with equal opportunity for personnel." This was the first example of the new Chancellor's attempt to back away from the previous Chancellor's commitment to an affirmative action program to be implemented by an independent Office of Equal Opportunity.

Reacting to Chancellor Anker's memorandum, the Director of the Office of Equal Opportunity wrote the Chancellor and stated in part the following:

> . . . One of the chief purposes of the central headquarters reorganization was to eliminate the duplication and overlapping of responsibilities. Yet a

> second unit called the Office of Equal Opportunity has been established within the Division of Personnel. A person has been placed in charge of such unit, and that person reports to the Executive Director of Personnel. There appears to be a question of policy at issue and I would appreciate clarification of this whole matter.[5]

According to school records, no official "clarification" of the matter ever came from Chancellor Anker. However, the records do show that the "Equal Opportunity" unit within the Division of Personnel was quietly removed, and no action was taken by the new Executive Director of Personnel to function as the school system's equal opportunity officer.

Chancellor Anker had every right to rescind Special Circular 105 issued by former Chancellor Scribner and substitute his own, i.e., moving the Office of Equal Opportunity to the Office of Personnel. This action, however, was never taken. Consequently, the Office of Equal Opportunity established by Circular 105 on March 29, 1973, authorizing the implementation of an internal affirmative action program, is the only official office of equal opportunity within the school system.

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[5]Memorandum from Richard H. Smith to Chancellor Irving Anker, re Office of Equal Opportunity, dated January 31, 1974.

Although no official effort was made by the Chancellor to replace the Office of Equal Opportunity, he continued to ignore its existence. Thus, it became increasingly clear to the Director of the Office of Equal Opportunity that certain high level school officials were covertly if not overtly denying the existence of the Office of Equal Opportunity and, contrary to law, preventing the adoption of any meaningful internal affirmative action program for the school system.

In October, 1973 the Board announced the appointment of Bernard R. Gifford as Deputy School Chancellor. Dr. Gifford thus became the highest ranking Black within the school system. As a result of the headquarters reorganization by EDC and announced on October 4, 1973, the Director of the Office of Equal Opportunity was directly responsible to the Deputy Chancellor rather than the Chancellor. As such, Dr. Gifford inherited the growing conflict between the school system and the Director of the Office of Equal Opportunity.

The Quota Phenomenon

Many observers of the Board of Education agreed with the director's position that powerful factions within as well as outside the school system opposed the implementation of an internal affirmative action program. These factions defended their position by branding any efforts at establishing an affirmative action program as an effort to establish racial hiring quotas. This was indeed a successful tactic; the mere mention of the word "quotas" in the New York City school system would immediately give cause for a series of high level meetings. Some evidence of this quota mentality is shown by the following illustrations:

1. Proposed policy statement. In June, 1972 former Board of Education President, Seymour Lachman, presented to the Board a proposed policy statement dated June 23, 1972 entitled, "Policy Statement on Personnel Practices in the New York City School System." The proposal stated in part,

> The Board of Education of the City of New York hereby reaffirms its policy of non-discrimination . . . . The New York State Constitution states that appointments and promotions in the civil service of the State . . . be made according to merit and fitness. The executive law of the State of New York prohibits racial or ethnic discrimination in personnel practices. History has taught that quotas are evil. The Board of Education is unequivocally against any quota system. . . .

This proposal was followed by an article in the New York Times on July 9, 1972 headed, "School Board Split on Job Quota Stand." The article reported that a split had developed among members of the Board over whether to take a public stand against ethnic hiring quotas. This matter arose after the community school board for District 1, on the lower east side of New York, adopted a policy on June 8, 1972 stating that school job vacancies be filled in a way that would "more nearly" reflect the ethnic composition of pupil population. The District's pupils are predominantly Black and Puerto Rican; its teachers and supervisors, largely white.

As a result of the action taken by Community School Board 1, two of the, then, five members of the central Board of Education were reported to have urged their Board to adopt the policy statement mentioned earlier, expressing "unequivocal" opposition to such "quotas." But a third member, Isaiah E. Robinson, the lone Black Board Member, was reported to have felt that the concern about quotas was groundless and reflected a misinterpretation of the District 1 policy statement. Mr. Robinson sent his own memorandum to the other Board Members. The memorandum dated July 6, 1972

said that the Board should address itself to the real need, and issue a statement calling for "affirmative action" to recruit more minority group members and women to school jobs. The District 1 policy statement was eventually modified and no official policy statement on the question of school hiring practices has been officially issued by the central Board of Education.

2. Position of UFT. Albert Shanker, President of the United Federation of Teachers (UFT) which represents approximately 60,000 teachers in the school system, in his weekly New York Times column dated July 16, 1972, expressed his opposition to "quotas" in an article entitled, "A Quarrel With Quotas." Portions of the article were as follows:

> Wherever one turns, there is mounting evidence that racial and ethnic quota systems are gaining official favor. Where once quota systems--official or unofficial, especially the latter--were abhorrent to most Americans and were, in fact, largely illegal . . . , this method of choosing people is becoming a new trend. . . . . . The current preoccupation with ethnic quotas spells danger. It is time that those who recognize the injustices of the past and who are working to undo them speak out against this particular method, . . .[6]

Mr. Shanker's opposition to "quotas" was also expressed in a second article on the subject appearing in his

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[6]Albert Shanker, "A Quarrel With Quotas," New York Times, July 16, 1972, sec. 5, p. 5.

weekly New York Times column on October 20, 1974. The article was entitled, "The Quota Mentality Vs. the 14th Amendment." There is little question that the position of Albert Shanker with respect to "quotas" has substantially contributed to the resistance on the part of the school system to effectuate an internal affirmative action program.

3. Community School Board 28. In 1973 and 1974, Queen's Community School Board 28, which has jurisdiction over twenty-eight schools in the Forest Hills and Jamaica section of Queens, refused to take part in a federal ethnic census of the school staff, maintaining that the census would lead to "quota" hiring in the school system. The District's student enrollment is approximately 60 percent Black and Hispanic and its teaching staff is 83.1 percent white, according to 1973-74 school ethnic census. Even the threat of losing up to $1.7 million in federal funds could not persuade the District Board to change its mind.

4. Opposition of CSA. Peter S. O'Brien, President of the Council of Supervisors and Administrators (CSA), the 4000 plus-member organization representing all middle-management school administrators, has continually voiced his membership's opposition to any form of "quota" hiring.

One such example of his opposition was clearly expressed in a letter to Chancellor Anker dated October 24, 1974. The letter was a result of a directive by the Chancellor to the school staff, requesting their compliance with federal law requiring the completion of EEO-5 Reports. (An EEO-5 Report is an annual federal ethnic survey of secondary school staff mandated by the Equal Employment Opportunity Act of 1972.) Portions of Mr. O'Brien's letter opposing this directive were as follows:

> It has recently come to our attention that members of the administrative and supervisory staffs have been directed to participate in a survey questionnaire designed to classify school personnel on the basis of race and ethnic identification. . . .
> . . . In so directing, CSA members are asked to judge, evaluate, classify, categorize, and pigeonhole their fellow human beings and co-workers by categories chiefly used by racists and bigots. This demand is indecent. . . .
> . . . This recommendation is inadequate; the survey is dangerous in that it will assist bigots and racists to foster illegitimate schemes.
> . . . The surveys are morally reprehensible and offensive to the CSA's values and beliefs. The survey is obscene; the CSA cannot participate in a survey which does so much violence to its members, who have cultural backgrounds representing all races, and subverts the structures and patterns of nondiscrimination that have been achieved and so proudly sustained by its membership. We know that you will, upon due reflection, agree that such surveys can only lead to illegal and racist quotas. Therefore, I respectfully request that you direct the withdrawal of the patently racist survey.

Mr. O'Brien's organization represents supervisory personnel in the school system. Current school ethnic data indicates that approximatly 15 percent of the supervisory staff consists of minority personnel. This increase over the less than two percent increase recorded in 1971 was substantially a result of the Chance v. Board of Education court case discussed in the previous chapter, and the Decentralization Law of 1969, and not the result of affirmative action on the part of CSA or the central Board of Education.

Common Misconceptions of Affirmative Action

This apparent obsession shown by factions within the school system in opposition to quotas is generally shared by many others throughout the country. For example, in the 1972 presidential election campaign, both Richard Nixon and George McGovern expressed their opposition to quotas. The term quota has a long history of semantic contortion. For many Jews, Catholics and other white ethnic groups it signified for many years exclusion from elite schools and the higher rungs of industry and banking. But while such practices have been greatly reduced regarding discrimination against white ethnic groups, discrimination against Black and other

minority groups persist. Many white ethnic groups argue that ratio or quota hiring does violence to the concept of "first come, first served," thereby violating the constitutional rights of white applicants already on a qualified list. But the essence of affirmative action is that whites--white males in particular-- already have the "inside track" to the job opportunities, and that until affirmative recruitment has taken hold sufficiently to overcome that advantage, the "first come, first served" principle will continue to give a discriminatory advantage to whites.

Another common misconception is that affirmative action does violence to the concept of preferring the "better qualified" applicant. Proponents of this view maintain that if an applicant has made a higher score on a competitive examination, or if he has more years of education, he should be preferred as "better qualified" than another applicant who, while eminently qualified for the job, has a lower score or less education. But often, comparative test scores or years of education do not accurately measure the applicant's ability to perform the job. Moreover, minorities and women have suffered decades of discrimination both in employment and in opportunities to obtain the education and training that are requisites for many jobs.

The use of standards unrelated to the duties of the jobs being sought, and having the effect of depriving such admittedly qualified persons from obtaining such jobs, perpetuates discrimination. Accordingly, the courts have recognized that job standards must "realistically" and "specifically" be fitted to the jobs for which they apply.[7]

Following are additional misconceptions regarding the implementation of affirmative action, submitted as responses to some commonly asked question about this subject:[8]

1. Question—Are not goals and timetables the same as quotas for racial, ethnic, and sex groups?

Answer—No. The essential difference is that under a quota system a fixed number or percentage of minorities or females is imposed upon the employer, who has an absolute obligation to meet that fixed number. No excuses are accepted, nor can failure to meet the quota be justified. Goals and timetables, by contrast, are result-oriented procedures by which the employer determines goals and a time

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[7]Griggs v. Duke Power Co., 401 U.S. 424 (1971).

[8]The responses submitted as well as some of the arguments for affirmative action are based on material supplied by the United States Commission on Civil Rights, Statement on Affirmative Action for Equal Employment Opportunity, (February, 1973).

schedule for correcting minority underutilization, and then makes every "good faith effort" to achieve the self-imposed goals.

2. Question—Why are goals and timetables necessary?

Answer—The necessity for goals and timetables arose out of long experience in which lip service to equal employment opportunity was paid by employers who did little to correct the situation. It also arose out of the realization that procedures for assuring equal employment opportunity can accomplish little unless they are tied closely to results.

The United States Civil Rights Commission has found that after generations of intentional and systematic discrimination against minorities and women, the pattern of unequal employment opportunity persists. Although intentional discriminatory practices are now illegal, many institutional and systematic practices still exist. Research has found that patterns of employment have become firmly established, creating many positions that minorities and women no longer even try to fill. Accordingly, if they are truly to get a fair deal in the job market, there is a compelling need for an effective program of affirmative action assuring women and minorities that meaningful equal employ-

ment opportunity is what they can reasonably expect. To achieve such assurance employers must affirmatively seek out minorities and women and place them in jobs for which they are qualified but from which they have long been excluded.

3. Question—Do not affirmative action plans establish preferential treatment for minority groups and women?

Answer—No. On the contrary, their purpose is to undo a preferential system many years in the making and to redress the historic imbalances now favoring white males in the job market. Redressing this imbalance requires that discriminatory patterns be eradicated and some measure of equity be established for persons who have been discriminatorily excluded in the past. Implementation of affirmative action plans must, therefore, necessarily involve a selection process aimed at achieving these goals. For the purpose of remedying discriminatory practices, a selection process designed to achieve such goals is a valid technique so long as it does not produce a pattern of discrimination against qualified members of another group. The fact is that very few persons are ever hired on a totally objective basis. Obviously many subjective elements enter into the selection process. The candidate's personality, disposition, experience, and apparent judgment are just a few of the elements that always influence a selection.

Unfortunately, a significant reason for the paucity of minority group persons and women in many job categories is that these subjective factors never included providing a fair share of employment opportunities to them.

It has become increasingly clear that an affirmative action plan must require some action that has not heretofore taken place. Otherwise it is useless. One of the requirements, therefore, is that in the subjective evaluations that always occur in the selection process, one factor previously excluded should now be included--a concern that a reasonable number of qualified minorities and women be hired until equity is attained.

4. Question—Are goals and timetables aimed at achieving proportional representation of minorities and women?

Answer—The concept of goals and timetables is not synonymous with proportional representation. The concept does come into play when it has been determined that minorities and women are underutilized or underrepresented in one or more job classifications. When underutilization has been established, affirmative action programs (as already described) are employed to bring minorities and women into the labor force in the numbers that "would reasonably be

expected by their availability." Goals and timetables may be viewed as the measure or yardstick to determine whether the affirmative action programs are, in fact, achieving the goals of increasing the number of minorities and women in the labor force. The concept of goals and timetables often conjures up an image of some precise mathematical division of a pie, whereby each group or subgroup gets a share dependent upon the size of the group. But the concept in no way depends upon a precise mathematical formula. Rather, it focuses on the demonstrable results of past discrimination (the underutilization) and seeks to remedy that by compensatory programs (affirmative action).

In summary, the "goal" that is referred to is nothing more than a description of what that labor force would look like absent the effects of illegal racial or sexual discrimination, and the "timetable" is the informed estimate of time needed to achieve the discrimination-free labor force without disrupting the industry or denying anyone the opportunity for employment.

Conclusion

The foregoing illustrations, perhaps, tell the real story of the New York City school system's opposition to establishing an internal affirmative action program better than any official explanation that could be given. An unofficial explanation, attributed to a current Board member, is that the Board is waiting for recommendations from the Chancellor. Yet there is no evidence to indicate that Chancellor Anker has directed that such a program be submitted.

The Office of Equal Opportunity, however, continues to exist, at least on paper. The director of the office continues to remind the system of its legal, moral and ethical responsibilities to adopt an internal affirmative action program. Thus far, neither the Chancellor nor the Board have taken a public or official position in support of an affirmative action program. Evidence points to the opposite--that the Chancellor and the majority of the members of the Board have unofficially and informally taken a position opposing such a program.

As a consequence, the New York City public school system--the largest public school system in the country--contrary to law, does not have an internal affirmative action

program.

The future of affirmative action in the New York City school system may well be in the hands of the courts. The Chance case, previously discussed, substantiated the belief of many that the school system's supervisory selection procedures were discriminatory. There are currently several court cases nearing trial dates, alleging that the school system also discriminates against Blacks and Hispanics in its teacher selection procedures. One such case, Rubinos v. Board of Education, bears close watching. Civil rights' legal experts give this case the best chance for a court victory which could result in a court mandated affirmative action program being imposed on the school system.

In the opinion of the Board's Director of the Office of Equal Opportunity, it is merely a question of time before the system is forced, either by the courts or as a result of pressure from the minority communities and women organizations, to implement an affirmative action program. The need for such a program has been established in this study. However, the politics involved in the matter have yet to be overcome.

CHAPTER VI

STRATEGIES FOR AFFIRMATIVE ACTION

In Chapter I the historical background of employment discrimination in this country and the various laws, executive orders and judicial decisions which theoretically constituted a comprehensive ban on job discrimination was reviewed. After carefully observing the employment picture of our society, it becomes obvious that those groups historically victimized by discriminatory employment practices continue to carry the major burden of that wrong doing.

Unemployment and underemployment for Blacks and Spanish Americans remain far higher than that of white Americans. For the past fifteen years, the unemployment rate for non whites has remained at twice that of whites. A recent report published by the National Urban League indicated that although white unemployment has dropped from 12.2 million to 11.8 million during the third quarter of 1975, Black unemployment rose to a record high of 3,075,000 for the same period, bringing the unofficial jobless rate for Blacks to twenty-six percent.

In whole industries in New York City such as, building construction, secondary and higher education and government civil service, racial and ethnic minorities and women are consistently absent or found in disproportionate numbers in low wage, low status jobs.

Income is another measure of the job discrimination suffered by minority Americans. In 1973 the median family income for whites was $12,595 compared with $7,269 for non whites. The discriminatory effect on minorities is obvious when one considers that thirty-two percent of Blacks were below the low income level in 1971. The number of white Americans living in poverty was reported to be only eight percent. The receipt of public assistance is another indicator of the economic status of minority citizens. While four percent of the white population receives public assistance, twenty-five percent of the minority population receives aid. In toto, 6.4 million minority group persons rely upon public assistance in order to survive.[1]

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[1] U.S. Department of Labor, Bureau of Labor Statistics, The Social and Economic Status of the Black Population in the United States, 1971, pp. 32-46.

Institutional Discrimination

Federal, state, and local laws prohibit employment discrimination by employers, labor unions, and others. Studies indicate that direct or overt discrimination, to a great extent, has been eliminated. But direct or overt discrimination has frequently been transformed into institutional forms of discrimination. Accordingly, one of the nations most pervasive forms of employment discrimination is "institutional discrimination." Here, discriminatory practices are a part of the fabric of the systems and institutions which control access to employment opportunity.

A clear example of this form of discrimination was reviewed in the Chance-Mercado v. Board of Education court case in Chapter III. The Board of Examiners and the Board of Education were enjoined from conducting supervisory examinations and establishing eligibility lists. The process (testing procedures) by which the lists were promulgated, though allegedly unintentional, was in fact, discriminatory against Blacks and Puerto Ricans.

The effects of institutional discrimination has been to erect formidable and, at times, insurmountable barriers to minorities and women seeking employment. The

bottom line effect has been to create a substantial preference for white males irrespective of their relative qualifications vis-a-vis members of the excluded groups.

Purpose of Affirmative Action Program

The Director of the Office of Equal Opportunity believes an affirmative action program for the New York City public school system should not be designed to establish quotas or preferential treatment for minorities and women. Rather, the purpose of such a program should be to eliminate the institutional barriers that minorities and women currently encounter in seeking employment and promotions, and thereby to redress the imbalance which is caused by the historic favoring of white males in the hierarchy of the school system. The elimination of disparities in employment opportunity is absolutely essential if the polarization with which New York City is now afflicted is ever to be eradicated. The effectuation of an affirmative action program by the Board of Education is therefore in the interest of the school system and the City of New York.

Significance of Ethnic Survey

Essential to an affirmative action program within the New York City school system is the development of a comprehensive inventory of all employees by race, sex and ethnicity. This data should be collected by organizational unit and by pay grade. It is also important that figures be collected concerning the number by race, sex and ethnicity of job applicants--accepted and rejected--including the reason for rejections, promotions, training opportunities offered, terminations, awards, transfers, and other matters relating to employee work conditions. These figures could be compared for each job category with estimates which are made of the availability of women and minorities within the New York City area.

Self Analysis

The use of affirmative action remedies is basic both to Title VII and to Executive Order 11246. Thus, for example, when the court in an action under Title VII determines that the defendant has discriminated in violation of the Title, the court will order the employer to undertake affirmative action which will remedy the discriminatory consequences of past discrimination and prevent the reoccurrence of such

discrimination in the future.

A principal difference between Title VII and Executive Order 11246 is that the executive order imposes upon federal contractors the duty to make a self- determination as to the need for affirmative action, without resort to a judicial determination. The New York City Board of Education contracts for funds in excess of $50,000 from the federal government.[2] This in fact makes the Board of Education a federal contractor and subject to the provisions of Executive Order 11246 and revised Order No. 4. Thus, the keystone of the affirmative action plan which the Board of Education as a federal contractor is required to adopt, is the self-analysis evaluation.

Like other affirmative action requirements applicable to the Board of Education, this "self analysis" requirement appears in regulations promulgated by the Office of Federal Contract Compliance (OFCC) of the United States Department of Labor. The regulations require,

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[2]Members of the staff of the Bureau of Reimbursable Programs for the Board of Education estimated that close to $50 million in direct federal funds was received by the Board of Education during the school year 1974-75. For example, a program called Follow-Through received an estimated $1,500,000; Title VII (Bilingual Education) received approximately $15 million, all in direct funding from the federal government.

> An analysis of all major job classifications at the facility, with explanation if minorities or women are currently being underutilized in any one or more job classifications. . . .[3]

The regulations define "underutilization" to mean

> Having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.[4]

Once a pattern of underutilization is identified, the next step is to assess the obstacles--paying particular attention to forms of "institutional discrimination"--which have produced the underutilization, and to design corrective affirmative action accordingly.

With respect to the Board of Education, underutilization of Black and Spanish-surnamed Americans in any number of job categories has been established. Most notable are teachers and supervisors, but many other categories are included. For example, out of 57 accountants employed by the school system as of October 15, 1971, six were Black. Of 174 carpenters employed by the school system, five were Black and none were Puerto Rican. Out of a total of 650 school custodians on the payroll as of the same date, twenty

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[3] 41 CFR 60-2.11(a).

[4] Ibid.

were Black and six were Puerto Rican. Of forty-seven plumbers, none were Black or Puerto Rican. However, in the lower paying school aid category, of 4,599 employees, 3,075 were Black and Spanish-surnamed.[5] Mainly it is this requirement of a self analysis, which is usually achieved by conducting a system wide ethnic survey, that is most objectionable to the forces within the school system opposed to an affirmative action program.

Legal Requirement

The absence of a court mandated affirmative action plan does not negate the New York City Board of Education's moral obligation to eliminate all discriminatory employment practices. It is of no consequence that such employment practices are largely unintentional. In addition to its moral obligation, the New York City Board of Education, since it is covered by Title VII and Executive Order 11246, also has a legal obligation to obey the law and take steps to eliminate any discriminatory employment practices that may persist in the school system. Clearly, the continuation

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[5] Census by Race and Ethnicity of City Personnel on Payroll of October 15, 1971, Conducted by the New York City Commission on Human Rights.

of discriminatory practices will eventually give rise to EEOC action or private litigation, with its concomitant remedies of back pay, reinstatement, affirmative recruitment and proportionate hiring, as well as other sanctions. The Board of Education would be well advised to eliminate unlawful employment practices itself, as opposed to awaiting future court or administrative action. Given the polarization which exists and stems in part from the existing gross disparities in employment opportunity, such affirmative action steps on the part of the Board of Education are not only legally mandated; they are also consonant with sound management principles.

Goals and Timetables

As noted, one aim of affirmative action is to assure against the continuation of discriminatory practices. Another aim is to redress patterns of minority and female underutilization. The best test for determining whether these aims are being achieved is by a results test. Whether expressed in terms of applications, hires, or promotions, the results test is the best indicator of whether women and minorities in fact are achieving the access to employment opportunities required pursuant to the twin aims

of affirmative action. Thus, goals and timetables set out the numerical increase in minority and female employment, by job classification, which the Board would aim to achieve in correcting identified underutilization.

In essence, equal opportunity goals and timetables are no different from the performance goals familiar in many business contexts--for example, in sales campaigns. In all such instances, the key to effective management is a reasoned determination of what results ought to be achieved. Those targeted results then become the foundation for supervisory determinations as to when the on-going efforts should be strengthened. Thus, for example, if sales figures drop below targeted goals, this sounds a signal for corrective action. Similarly, if minorities or women hires fall below targeted goals, this should sound a signal for a careful examination of whether systematic barriers to equal employment opportunity have been overcome, and whether more satisfactory progress can be made in redressing patterns of underutilization.

The crucial factor that must be kept in mind with respect to goals and timetables and affirmative action is that they complement each other. The goals and timetables comprise a guide in determining whether the affirmative action plan is working.

Recommendations

After careful review of the relevant data and based on the foregoing conclusions, the following recommendation is made.

The Board of Education should immediately adopt an internal policy of equal employment opportunity and implement that policy by establishing a Program of Affirmative Action. The primary purpose of the policy and program should be to identify and eliminate all forms of discriminatory barriers that minorities and women currently encounter in seeking employment and promotions within the school system.

Model Program of Affirmative Action

Following is the author's concept of a model Program of Affirmative Action for the New York City Board of Education.

PROGRAM OF AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY FOR NEW YORK CITY SCHOOL DISTRICT PERSONNEL

I. INTRODUCTION

The New York City Board of Education is committed to the goal of equal opportunity in employment, and shall

promote this principle as a basic policy in the governing of the New York City public school system.

The Board is aware that equity in job opportunity can not be obtained without the application of effort and, in some cases, unusual measures.

This Affirmative Action Program will require sustained action and cooperation on the part of the entire school staff in order to implement recruiting, staff development and career advancement efforts that are calculated to achieve an increase in qualified or qualifiable minority and female representation at all levels of responsibility within the school system.

The following policy of equal employment opportunity is consistent with the requirements and objectives of Title VII of the Civil Rights Act of 1964 as amended, Presidential Executive Order 11246 as amended, Revised Order No. 4 of the U.S. Department of Labor, and Mayoral Executive Order No. 14, City of New York, as well as other applicable Federal and State regulations concerned with equal employment opportunity.

II. POLICY

It is the policy of the Board of Education, City of New York to provide an employment process that is free of overt as well as covert discrimination based on race, color, age, sex, national origin, handicap, marital status, religion or political beliefs or affiliations. In adopting this policy, the Board of Education recognizes that a passive policy of non-discrimination will not, of itself, eradicate existing institutional forms of discriminatory barriers to equal employment opportunity. It is for this reason that the Board of Education commits itself to a positive Program of Affirmative Action, designed to significantly increase the number of minorities and women at all levels of the pedagogical and administrative work force where they are found to be underutilized. The overall objective of the Affirmative Action Program is to remedy the disparity in staffing and recruitment patterns that are the present consequences of past discrimination and to prevent the occurrence of such employment discrimination in the future.

The affirmative action program encompasses all phases of the employment process, including evaluation of job

classification to ensure job-relatedness, recruitment, selection, validity of examinations, retention, lay-offs, assignment, training, promotion, salary and benefits. Essential to this affirmative action program is the development of a comprehensive inventory of all employees by race, sex and ethnicity.

III. ASSIGNMENT OF RESPONSIBILITY

The Chancellor of schools or his designated representative shall have overall responsibility for the affirmative action program.

It shall be the responsibility of each and every Executive Director, Supervisor, Community Superintendent, Administrator and staff member in both central and district offices, to see that their procedures, programs, policies and operations are consistent with Board of Education equal opportunity policy.

It shall be the responsibility of the Director of the Office of Equal Opportunity, who shall be responsible directly to the Chancellor, to supervise, coordinate and evaluate the implementation of Board of Education equal opportunity policy and to develop, on behalf of

the Chancellor, programs and procedures to assist the various central and district offices of the Board of Education to effectuate that policy.

The Chancellor and the Director of the Office of Equal Opportunity will report to the Board semi-annually on the results of the affirmative action program.

IV. POLICY DISSEMINATION

A. INTERNAL

The Office of Equal Opportunity in cooperation with the Division of Personnel is responsible for disseminating information regarding Board of Education equal opportunity policy and the affirmative action program to all supervisory, administrative and management levels and to all employees of the Board of Education by:

1. Publicizing the policy statement through a variety of media to promote its widespread circulation and understanding among employees, employee organizations, trade unions and associations.
2. Conducting special meetings with top management, mid-management, and supervisory personnel to review the policy and affirmative

action program, to explain the purpose and background of the affirmative action program, to clarify responsibility for the program's implementation and administration, to communicate an understanding of all factors necessary for success of the program.

3. Assisting supervisors, administrators and managers within each district, division, bureau, and unit with meetings of all their supervisory personnel to explain the purpose of the board policy and the affirmative action program, making clear their individual responsibilities for assuring equal employment opportunity and securing a commitment to the goals of affirmative action and the success of the program from all supervisory personnel.
4. Providing all employees and applicants for employment, appropriate material and information regarding the board's policy.
5. Assuring that board policy and relevant posters are placed in prominent areas throughout the school system.

B. EXTERNAL

The Office of Equal Opportunity in cooperation with the Division of Personnel and the Office of Public Affairs, will publicize and promote the board's equal opportunity policy and affirmative action plan by contacting and informing parent groups, community organizations, other agencies, all recruitment sources, colleges and universities, religious groups, news media, and all other appropriate organizations and groups.

The equal opportunity policy will be included in all contracts, purchase orders, leases, etc., entered into by the Board of Education.

V. WORK FORCE ANALYSIS

The Office of Equal Opportunity in conjunction with the Division of Personnel, will take such steps as are necessary to conduct an annual in-depth survey and analysis of minority and female employment in each job classification within the Board of Education to determine where specific problem areas may exist so that appropriate remedial action can be initiated.

The information provided by workforce analysis will be

utilized to establish the Board of Education's five year goals for increased representation of minorities and women. Such goals will be set where disproportionate utilization is identified.

VI. GOALS AND TIMETABLES

A. DEFINITION

Affirmative action goals and timetables reflected in this report are result-oriented procedures by which the Board of Education determines goals and a time schedule for correcting minority and female underutilization. Goals and timetables will not be considered as quotas, but as flexible targets and anticipated results that the City District can reasonable expect to achieve.

B. GOALS

Any serious attempts to remedy underutilization of minorities will require setting measurable goals and reasonable timetables for achieving them. Some actions to comply with this policy can be taken immediately; other actions will require intermediate and long range goals. The survey of present employment and analysis of underutilization

and concentration by job classification will provide the school system with the basic data for formulating specific goals and timetables.

The immediate goal shall be to require each community school district and central division to be responsible for developing on a yearly basis their plan for contributing to the overall goal of the entire school district. Such plans shall include the necessary affirmative action procedures to recruit, employ, and promote members of groups formerly underutilized at the various levels of responsibility who are qualified or may become qualified through appropriate training or experience within a reasonable length of time. The plan shall be submitted in writing for review and approval by the Director of the Office of Equal Opportunity and shall include:

1. Identification of problem areas of underutilization, utilizing their workforce analysis;
2. Specific corrective actions to be undertaken, setting forth individual responsibility for

implementation and target date for initiation and anticipated completion;

3. Plans for monitoring the progress of the corrective action.

The ultimate long-range goal of the board's affirmative action program shall be representation of excluded groups identified as underutilized in each major job classification, in reasonable relation to the overall New York City labor force participation of such group.

C. FACTORS RELATED TO GOAL SETTING

Below are listed some of the positive results which can be achieved through the use of affirmative goals and timetables:

1. Aggressive recruitment of minorities and females;
2. Improved job-related selection process;
3. Development of training programs to enhance the upward mobility of minorities and females currently employed;
4. Encouragement of minorities and females to pursue careers within the school district.

The establishment of a single district wide goal for the New York City school district will be difficult because of the following reasons:

1. Limitation on new staffing due to financial constraints;
2. Anticipated vacancies and turnover in light of the impact of a shrinking student population;
3. The factor of reduced turnover among district employees due to increasingly restrictive job market;
4. The seniority and tenure employment provision of the City School District.

However, it is the intent of this plan that, wherever possible, efforts will be made to reduce the adverse effects of factors such as those listed above.

Furthermore, because of certain employment patterns common to most K-12 School Districts, an effort will be made to develop affirmative action techniques and activities designed to promote qualified women to various levels of responsibility and to provide appropriate training and experiences to qualify them for promotional opportunity.

VII. EMPLOYMENT PRACTICES

The Office of Equal Opportunity, in conjunction with the Personnel Division, will identify personnel procedures and policies within each District, Division, or Operating Unit thereof that may have an adverse effect on the employment, promotion, and retention of women and minorities. It will modify or recommend modification of procedures and policies to help remove the causes of underutilization and to meet the employment goals and timetables of this program. This will include but not be limited to:

1. Providing technical assistance to the administration in the area of job analysis and job restructuring;
2. Encouraging informed participation by the thirty-two Community School Boards, Community Groups, Labor Organizations and others interested in the affirmative action activities of the district;
3. Taking appropriate action to remedy individual cases of demonstrated injustices;
4. Recommending to the Chancellor additional remedies or procedures which promote equal employ-

ment opportunity;

5. Working cooperatively with the Staff Development Bureau to achieve a comprehensive staff development program that is district-wide in scope.

Community Superintendents and Division Heads will be responsible for identifying employment, assignment, request for transfer, staff development and promotional practices within their influence that may have an adverse effect on women and minority groups and correcting those practices to eliminate their adverse effect through the affirmative action plans for each of their operating units.

A. RECRUITMENT

Ongoing recruitment activities of the Personnel Division shall include but are not limited to:

1. Maintaining and staffing Personnel Offices in those areas within the district where large numbers of minority group members live;
2. Placing a substantial number of job advertisements in publications with minority group appeal, maintaining mailing list of minority group organizations to which examination

announcements are sent, and maintaining records of the results of such activities;

3. Avoiding use of newspaper ads divided into traditional male/female help wanted columns whenever possible;
4. Using women and minorities as recruiters to contact high schools, junior colleges, and colleges with high enrollment of women and minorities to interest them in a career in education;
5. Using women and minority employees as recruitment representatives at "career days" and job fairs in Junior and Senior high schools;
6. Using simplified job applications and examination announcements in English and in languages other than English whenever practicable for classified examination;
7. Reviewing entrance qualifications for examinations with interested groups to assure that required qualifications are job-related and to provide alternate methods of demonstrating the required qualifications whenever practicable.

B. SELECTION

The affirmative action responsibilities of the Personnel Division shall include:

1. Developing and utilizing practice tests for entry-level classes and developing and distributing sample-test booklets in advance of written tests for higher level classes whenever possible in classified examinations;
2. Using "work sample" tests or other job-related procedures in lieu of traditional written tests for classified examinations involving employment classes with low requirements for reading skills;
3. Ensuring that qualified women and minorities are represented as interviewers on district interview boards and ensuring that all members of interview boards have been properly trained in interviewing before such assignments;
4. Developing selection devices, especially for classes for which examinations typically have an adverse effect on minority group members and women which maximize job-relatedness and minimize the adverse effect;

5. Reviewing and revising those health and criminal conviction standards which are unnecessary impediments to employment;
6. Making minority and sex census reports of applicants, candidates and eligibles, and reporting this information to the New York State Education Department and to the United States Equal Employment Opportunities Commission as required;
7. Documenting in writing the reasons for passing and failing candidates and providing for the generalized discussion of this information between the Personnel Division staff and the candidates upon their request;
8. Reviewing, evaluating, and modifying where consistent with the New York State Education Law and other law the following:
    a. Certificated position descriptions;
    b. Position titles;
    c. Minimum job requirements (including sex, background and medical stands);
    d. Application Forms;
    e. Types of tests used;

f. Methods of administering test;

g. Interviewing techniques, rating procedures to ensure that no artificial barriers to the employment of women and minorities are present.

9. Reviewing and modifying where appropriate personnel policies and procedures to overcome any employment technique which has an adverse impact on women and minority groups;

10. Providing the opportunity for employment permanency to underutilized groups as soon as possible and practical.

C. ASSIGNMENT

1. It shall be the responsibility of the Personnel Division in cooperation with the Office of Equal Opportunity to develop a set of assignment procedures which will provide for the assignment of all personnel within the district in such fashion as to insure that all work locations with a substantial number of multi-position classifications shall be integrated to a reasonable extent. Where such integration cannot be accomplished, the administrator of

that location shall document in writing the reasons for the lack of an integrated work force and report such to the Personnel Division and the Office of Equal Opportunity.

D. STAFF DEVELOPMENT

1. The Staff Development Bureau of the Division of Personnel will be responsible for providing or designing staff development programs, utilizing existing resources whenever possible to improve opportunities for women and minorities in order for them to realize upward mobility.

2. Specific efforts will be made by the Personnel Division to assess the availability of qualified or qualifiable women and minorities presently employed by the district who may be interested in promotional or new assignments and to encourage their participation in training programs where appropriate.

3. The Office of Equal Opportunity and the Staff Development Bureau will work cooperatively to assure the inclusion of all underrepresented personnel interested in an appropriate form of training or improvement program.

4. Selection of employees for any training program will take into consideration the affirmative action goals of this program and the needs of the District. The Office of Equal Opportunity will work with the various operating units, the Staff Development Bureau and the Personnel Division to ensure that selection for training has been accomplished in a manner consistent with the equal opportunity policy of the District.

5. Federal and State funding sources will be sought to assist the district in its effort to establish a sound staff development program available to all employees.

6. Community Superintendents and Division Heads will be responsible for developing, restructuring, on-the-job training, supervisory and managerial training, improved methods of selecting employees for training and other forms of employee development that can be accomplished on their own initiative or with the aid of the Office of Equal Opportunity and the Staff Development Bureau.

VIII. LEGISLATIVE ACTION

The Chancellor's office will be responsible for recommending new legislation which will improve the affirmative action efforts of the district and for recommending changes in existing statutes identified as having an adverse effect on female and minority employment.

IX. COMPLAINT PROCEDURE

A. RESPONSIBILITY

Each Community Superintendent and Division Head will be responsible for the affirmative action efforts of each department under his/her control. The Community Superintendent or Division Head may designate a representative to perform this function, in which case he/she will have the responsibility for investigating and resolving any complaint of discrimination made by an employee of that District or Division. The designated representative shall be known as the Affirmative Action Representative for that unit.

B. PROCEDURE

1. Any permanent school district employee may protest in writing to the Community Superin-

tendent or Division Head and request an investigation of any procedure or practice in selection, assignment, staff development or promotion the employee may feel is discriminatory.

2. If the complaint concerns a matter within the purview of the classified or certificated adjustment procedure, the complainant shall use that procedure to resolve the grievance.

3. If a complaint is being processed through the classified or certificated Adjustment Procedure, the Office of Equal Opportunity may be requested by the district or complainant to assist in the resolution of the grievance.

4. If the complaint does not concern a matter within the purview of either Adjustment Procedure, it may be referred in writing by the district or the employee to the Office of Equal Opportunity.

X. MONITORING AND REPORTING

A. MONITORING

1. Semi-annually, the Office of Equal Opportunity and the Personnel Division will evaluate the

district's progress toward achieving the district goals for this plan. They will monitor the number of appointments of women and minorities in each major classification, the results of recruitment programs, applicant rejection ratios by race, or ethnic group and sex shall be included in this report.

2. The annual employee performance evaluation for all personnel at the supervisory level and above shall take into consideration the affirmative action efforts and results of the employee as a requirement of the evaluation process.

3. The Office of Equal Opportunity will identify and report to the Chancellor any Community School District or Division that fails to submit to that office and the Personnel Division its yearly goal and program for achieving that goal.

4. The Community Superintendent or Division Head or designated representative will be responsible for monitoring their operating unit's affirmative action program and procedures.

This includes:

a. Monitoring new appointments, promotions, transfers and terminations and reviewing any significant trends.

b. Reviewing employee progress during probationary periods with particular emphasis on women and minorities.

c. Compiling a brief report on the number of discrimination complaints received in the Community District or Division and the final disposition of each.

d. Provide all necessary information and assistance to the Personnel Division and the Office of Equal Opportunity with respect to these monitoring activities.

5. The Personnel Division will meet periodically with the Office of Equal Opportunity to review the progress of their procedures and the affirmative action program. Prior to such meetings, operating units shall submit to the Personnel Division, a copy of their units' reports on progress toward meeting their goals. This information will be reviewed to determine

the Community District's or Division's contribution to the overall goals of the district.

B. REPORTING

The Chancellor and the Director of the Office of Equal Opportunity will semi-annually report to the Board of Education on the progress of the Affirmative Action Program and Equal Opportunity Policy of the district, and any other matters related to equal opportunity or affirmative action it wishes to bring to the Board's attention.

XI. ACCOUNTABILITY

For administrators and all other supervisory personnel found not to be contributing to the district's plan or in non-compliance with the provisions of this Affirmative Action Program and Equal Opportunity Policy, the appropriate disciplinary action provided for in the Board of Education's Rules and Policies, will be immediately exercised.

Conclusion

In the preceding five chapters, an attempt has been made to examine and analyze those factors within the New York City public school system that contribute to job discrimination, and to establish the need for a positive affirmative action program to eliminate such discrimination. One inescapable conclusion is that reform is urgently needed with respect to its current policies and procedures governing recruiting, hiring, selecting, assigning and promoting minority and women employees.

There is overwhelming evidence to support the claim of some that the school system's employment practices are, in effect, discriminatory. A review of the Board's own ethnic survey of teaching, supervisory and administrative staff disclose lower percentages of Blacks and Hispanics than in virtually any other major urban school system in the country. For example, out of over 56,168 teachers surveyed for the school year 1973-74, 4,988 or 8.9 percent were Black. The availability of minority teachers in other urban areas far exceed New York City (see Chapter II, table 7).

The court, in Chance v. Board of Education, enjoined the Board of Examiners from conducting examinations for supervisory positions, on the grounds that the examinations were unconstitutionally discriminatory against Blacks and Puerto Ricans. The courts have further ruled in other cases under Title VII that, if an employment practice excludes a significantly higher proportion of qualified persons from one group, it has a "disparate impact" and unless job related it is prohibited. There are many instances of such "disparate impact" within the employment practices of the New York City school system. We have previously cited some of them. The evidence submitted leads to the conclusion that the present employment system is not only discriminatory. It is also outmoded, lacking validity, unnecessarily cumbersome and rigid, and inconsistent with the concepts of decentralization. The evidence also gives credence to the belief by many that the current employment practices, particularly the selection process, cannot be corrected except by wholesale reform.

The evidence submitted has further shown the Board of Education's continuous reluctance to voluntarily reform its employment practices by establishing its own affirmative action program.

The legal requirement of the school system to adopt an affirmative action program has been established. The educational, moral and ethical imperatives of affirmative action within the school system should need no further explanation. It is clear that, in the current economic situation facing the school system and the City of New York, effective implementation of affirmative action will require greater--not less-- commitment to the goal of equal opportunity in employment.

Dr. Bernard Gifford, Deputy Chancellor of the school system, correctly summarized the predicament of the Board of Education in this regard, in a report entitled, Seniority and Layoffs.

Dr. Gifford commented as follows:

> . . . , the New York City Board of Education is caught in a web of fiscal, legal, management, labor, and government pressures with regard to the conflict between last-in, first-out layoffs and staff integration/equal employment opportunity. The Board must not only contend with these internal and external pressures in order to resolve the present conflict, but also must anticipate future problems in order to avoid losing its policy making prerogatives to the courts. . . .

Dr. Gifford further stated in his report that the courts may eventually mandate changes in the seniority rule spelled out in the contract between the Board and The

United Federation of Teachers, as well as the Education Law of New York State. He concluded by stating that, "The facts of the present situation indicate that consideration, action and leadership by the Board of Education is necessary at this time."

Clearly, race and ethnicity are not matters which the New York City Board of Education can continue to ignore. Assuring equal opportunity will require affirmative action to upgrade the role of minorities and women in the school system--the same kind of affirmative action the school system routinely requires of its contractors, vendors or suppliers. This does not imply the establishment of rigid quotas or preferential hiring. It does however acknowledge the importance of achieving better racial representation as a goal of all personnel policies and practices within a system where such equalization has been tragically delayed.

APPENDIX 1

BOARD OF EDUCATION RESOLUTION REQUIRING ON-THE-JOB TRAINING PROGRAMS

86. ON-THE-JOB TRAINING PROGRAMS AS A CONDITION OF AWARD FOR FUTURE SCHOOL CONSTRUCTION WORK (AMENDED)

The Acting Superintendent of Schools presents the following resolutions for adoption:

RESOLVED, That the following statement sets forth the policy of the Board of Education pertaining to on-the-job training programs involving workers from disadvantaged areas, as a condition of award on all future new school construction and major modernization contracts; and be it further

RESOLVED, That the Chancellor or the Acting Superintendent of Schools is hereby directed to issue such regulations, orders and instructions as is deemed necessary and appropriate to carry out the intent of the above policy; and be it further

RESOLVED, That such policy will take effect as of May 1, 1970.

STATEMENT

1. The Board of Education of the City of New York shall henceforth require that, on all future new school construction and major modernization contracts, an acceptable plan for on-the-job training programs involving workers from disadvantaged areas be submitted by contractors and subcontractors doing such work.

2. Such plan must be submitted to the Chancellor or the Acting Superintendent of Schools prior to the award of a contract and shall conform to the rules, regulations and instructions promulgated by the Chancellor or the Acting Superintendent of Schools after consultation with the Board of Education.

3. The plan shall provide for the training of as many workers from disadvantaged areas as is practical in the project work-force during the course of construction.

4. The plan must establish a program for the training of workers from disadvantaged areas with the intent of qualifying such workers for full journeyman status.

EXPLANATION

At its meeting on May 22, 1968, the Board of Education adopted resolutions amending its general instructions for bidders, in order to strengthen its policy requiring equal employment practices for all contractors with whom it does business.

This policy was further strengthened with the appointment of a Contract Compliance Officer. This resolution is intended to further strengthen the Board's policy.

While there has been an increase in employment of workers from disadvantaged areas and in their participation in apprenticeship programs, this new policy is calculated to develop also the skills of those not eligible for apprenticeships programs, for any reason. In this way it is anticipated that such persons will achieve employability as journeymen.

These resolutions and the regulations promulgated pursuant thereto should accomplish this purpose.

APPENDIX 2

BOARD OF EDUCATION RESOLUTION SUSPENDING BID, PERFORMANCE AND PAYMENT BONDS FOR CONTRACTS NOT EXCEEDING $50,000.00

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF SCHOOL BUILDINGS
DIVISION OF MAINTENANCE AND OPERATION

April 3, 1970

MODIFICATION TO SPECIFICATION REQUIREMENTS - INSTRUCTIONS TO BIDDERS

The Acting Superintendent of Schools presents for adoption the following resolution:

RESOLVED, That Bid Bonds, Performance Bonds and Payment Bonds may be waived in the bidding documents at the discretion of the Executive Director, Office of School Buildings for contracts not exceeding $50,000.

EXPLANATION

These modifications to existing bond requirements, heretofore adopted by the Board of Education on February 21, 1950, Item # 18, pp. 230-236 and amended on April 27, 1950, Item # 20, pp. 1016-1025, will in our opinion encourage participation by minority contractors who are desirous of bidding on our contracts for Maintenance and Repair work. Heretofore, minority contractors have been unable, or experienced difficulty in obtaining bonds.

Respectfully submitted,

IRVING ANKER
Acting Superintendent of Schools

Approved:

R. J. Martin

RICHARD J. MARTIN, DIRECTOR
Division of Maintenance & Operation

Recommended by:

/s/ Hugh Mc Laren, Jr.

HUGH MC LAREN, JR., Executive Director
Office of School Buildings

AI:sh

APPENDIX 3

EQUAL OPPORTUNITY REQUIREMENTS FOR CONTRACTORS

BOARD OF EDUCATION
THE CITY OF NEW YORK
DIVISION OF SCHOOL BUILDINGS
28-11 BRIDGE PLAZA NORTH
LONG ISLAND CITY, NEW YORK 11101

MODIFICATION TO INSTRUCTIONS TO BIDDERS EFFECTIVE FOR ALL WORK BID ON OR AFTER JANUARY 2, 1974.

PAGE 10, PARAGRAPH 13. DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:

13. Equal Opportunity Requirements for Contractors

The attention of all bidders is particularly directed to the various provisions set forth in the contract documents with respect to providing equal employment opportunity, prohibiting discrimination in employment, soliciting of minority subcontractors, and providing on-the-job training programs.

A. Pre-Award Conference

Prior to the award of contract to the low bidder, and if requested by the Office of Equal Opportunity, such bidder shall attend a pre-award conference to be held in the Office of Equal Opportunity of the Board of Education for the purpose of acquainting him with the statutory and contractural requirements and what specific measures shall constitute an acceptable Program of Affirmative Action.

B. Program of Affirmative Action

1. The low bidder for the contract, prior to the award thereof, shall submit to the Director of the Office of Equal Opportunity of the Board of Education a policy letter known as a Program of Affirmative Action.

2. The term "Program of Affirmative Action" (hereinafter referred to as P.A.A.) means a written plan formulated by a contractor which includes an analysis of employment, at all levels and in all categories and aspects of its work force, which indicates at which levels and in what categories and aspects, if any, the contractor is deficient in the utilization of minority groups; and contains goals and timetables toward the attainment of which the contractor's good faith effort must be directed to correct those deficiencies.

B. Program of Affirmative Action, -- Cont'd.

3. The P.A.A. shall apply to all Board of Education contracts except that, with regard to contracts under $25,000.00, the Director of the Office of Equal Opportunity shall be authorized to make such modifications as may be appropriate in the individual case.

4. The low bidder's P.A.A. with respect to the affirmative action to be taken by him in connection with equal employment opportunity, will be considered by the Board of Education in its determination as to whether a numerical low bidder will be judged the lowest responsible bidder entitled to award of this contract.

5. The low bidder's written P.A.A. must be submitted to the Director of the Office of Equal Opportunity within 15 days after the bid opening. The Director of the Office of Equal Opportunity acting for the Chancellor shall be the judge of the Program's acceptability.

6. In the event the low bidder fails to submit an acceptable written P.A.A. within the said 15 days, the Director of Equal Opportunity may recommend that the low bid be rejected, the amount of the bid deposit be forfeited, and that the low bidder be disqualified from bidding on Board of Education work for a period of one year.

7. The P.A.A. shall set forth goals of minority manpower utilization for the contractor, and insofar as they can be projected for all of its subcontractors, within at least the percentage ranges per time period which follow below, for each building and construction trade which will be used on the contractor's project(s). These goals shall express the contractor's commitment to comply with this affirmative action program in each specified building and construction trade on its construction project(s) during the terms of the covered contract.

RANGE OF MINORITY WORKERS
EXPRESSED IN PERCENTAGE TERMS

TRADE		
	(A)	FROM , 1973 UNTIL JUNE 30, 1974
	(B)	FROM JULY 1, 1974 UNTIL JUNE 30, 1975
	(C)	FROM JULY 1, 1975 UNTIL JUNE 30, 1976
	(D)	FROM JULY 1, 1976 UNTIL JUNE 30, 1977

RANGE OF MINORITY WORKERS
EXPRESSED IN PERCENTAGE TERMS - Cont'd.

TRADE	
Electrical Workers	(A) 16% - 19%
	(B) 20% - 23%
	(C) 23% - 26%
	(D) 27% - 30%
Carpenters	(A) 23% - 28%
	(B) 25% - 29%
	(C) 27% - 30%
	(D) 28% - 32%
Steamfitters	(A) 11% - 12%
	(B) 16% - 17%
	(C) 21% - 23%
	(D) 25% - 28%
Metal, wire, and wood lathers	(A) 24% - 25%
	(B) 25% - 27%
	(C) 27% - 29%
	(D) 28% - 31%
Painters	(A) 20% - 23%
	(B) 22% - 25%
	(C) 25% - 28%
	(D) 27% - 31%
Operating Engineers	(A) 18% - 22%
	(B) 21% - 25%
	(C) 24% - 28%
	(D) 27% - 30%
Plumbers	(A) 15% - 20%
	(B) 19% - 23%
	(C) 23% - 27%
	(D) 26% - 30%
Structural Ironworkers	(A) 20% - 26%
	(B) 22% - 28%
	(C) 25% - 30%
	(D) 28% - 31%
Elevator Constructors	(A) 5% - 6%
	(B) 11% - 12%
	(C) 17% - 19%
	(D) 24% - 26%
Bricklayers	(A) 23% - 28%
	(B) 25% - 29%
	(C) 27% - 31%
	(D) 28% - 32%
Asbestos Workers	(A) 5% - 10%
	(B) 11% - 16%
	(C) 18% - 22%
	(D) 24% - 27%

RANGE OF MINORITY WORKERS
EXPRESSED IN PERCENTAGE TERMS - Cont'd.

TRADE		
Roofers	(A)	10% - 15%
	(B)	15% - 20%
	(C)	20% - 24%
	(D)	25% - 29%
Ornamental Ironworkers	(A)	22% - 23%
	(B)	24% - 25%
	(C)	26% - 28%
	(D)	28% - 30%
Cement Masons	(A)	19% - 23%
	(B)	22% - 26%
	(C)	25% - 28%
	(D)	27% - 31%
Glaziers	(A)	12% - 16%
	(B)	17% - 20%
	(C)	21% - 25%
	(D)	26% - 29%
Plasterers	(A)	20% - 25%
	(B)	23% - 27%
	(C)	25% - 29%
	(D)	28% - 31%
Teamsters	(A)	22% - 23%
	(B)	24% - 25%
	(C)	26% - 28%
	(D)	28% - 30%
Mosaic,tile, and terrazzo workers	(A)	8% - 10%
	(B)	13% - 15%
	(C)	19% - 21%
	(D)	24% - 27%
Tapers	(A)	22% - 25%
	(B)	24% - 27%
	(C)	26% - 29%
	(D)	28% - 31%
Boilermakers	(A)	11% - 13%
	(B)	15% - 18%
	(C)	20% - 23%
	(D)	25% - 28%
Sheetmetal Workers	(A)	15% - 16%
	(B)	19% - 21%
	(C)	23% - 25%
	(D)	26% - 29%
Laborers	(A)	25% - 30%
	(B)	26% - 31%
	(C)	28% - 32%
	(D)	29% - 33%

RANGE OF MINORITY [illegible]
EXPRESSED IN PERCENTAGE TERMS - Cont'd.

TRADE	
Tunnel Workers	(A) 25% - 30% (B) 26% - 31% (C) 28% - 32% (D) 29% - 33%
Mason Tenders	(A) 25% - 30% (B) 26% - 31% (C) 28% - 32% (D) 29% - 33%
Demolition Workers	(A) 25% - 30% (B) 26% - 31% (C) 28% - 32% (D) 29% - 33%

At a minimum, on or before July 1, 1978 contractors shall make a good faith effort to employ minority journeymen in each building and construction trade in approximately proportional representation as the percentage of minorities in the population of the city of New York.

8. Nothing herein shall be interpreted or enforced as requiring the use of quotas in hiring.

9. An acceptable P.A.A. shall also include the following:

a. An acceptable plan for complying with the on-the-job training requirement as specified in the bid documents.

b. Written evidence or other proof which shows that minority subcontractors have been solicited and given an equal opportunity to submit proposals and that such proposals have been given equal consideration for award. The Office of Equal Opportunity, Board of Education, shall maintain a list of minority contractors which have satisfied the requirements of the Board of Education for competence and financial responsibility.

c. A commitment that the low bidder understands and will comply with the requirement to submit monthly equal opportunity-contractor workforce reports to the Office of Equal Opportunity, Board of Education.

B. Program of Affirmative Action, Div.9 Cont'd.

d. Commitment to good faith efforts to participate in programs for rapid advancement to full journeyman pay scale of minority employees who by training and/or experience can perform the duties of a qualified journeyman.

e. The P.A.A. shall specify the unions or other employee organizations from which the contractor anticipates obtaining workers in each building and construction trade, and shall include commitments to good faith efforts to seek to affect, directly or through its contractors association or other employer organization, programs by such unions or organizations to advance trainees to journeyman status when they successfully complete their course of training, and programs to accept new minority apprentices at the rate of no less than one minority apprentice to every three non-minority apprentices.

f. Unless otherwise exempted by the Board of Education, all facilities of the contractor, including any which are in any respect separate and distinct from activities of the contractor related to the performance of the contract shall be equally subject to these provisions.

g. The P.A.A., or portions thereof, shall be submitted on such forms as shall be provided by the Office of Equal Opportunity, Board of Education.

h. The P.A.A. shall include a commitment to submit to the Office of Equal Opportunity, Board of Education, a separate P.A.A. of the form and substance specified in subdivisions a. through g. hereof, for each subcontractor prior to its approval by the Board of Education.

B. Program of Affirmative Action, Dev.& Cont'd.

i. Unless otherwise exempted by the Board of Education, no specific good faith commitment, including goals of minority manpower utilization, contained in the P.A.A. shall be acceptable which is not at least equal to any such commitment contained in the most recent previous affirmative action program, if any, of the contractor.

C. Requirements After Award of Contract

In addition to a written P.A.A. the prime contractor shall:

1. File and also cause its subcontractors to file equal opportunity-compliance workforce reports monthly with the Office of Equal Opportunity, Board of Education. The Office of Equal Opportunity may require weekly or bi-weekly reports from any one specific contractor or subcontractor as it deems advisable.

Such compliance workforce reports shall indicate the following:

a. The percentage of work completed on the contractor's construction project(s).

b. The subcontractors of every tier working on the contractor's construction project(s).

c. The total number of workers and the total number of minority workers during the specified period in each building and construction trade, including separate statistics for journeymen, apprentices and trainees.

d. Explanations for any current or anticipated departures from the total manpower utilization or minority manpower utilization projected in the contractor's P.A.A..

e. Any and all efforts made to recruit individuals from minority groups.

f. All other policies or practices of the contractor affecting compliance.

C. Requirements After Award of Contract - Cont'd.

2. Cooperate with civil rights groups and responsible community organizations concerned with the need for representative numbers of minority group workers in the building and construction trade industry.

3. Hire minority group members from other sources should the union with which he has a collective bargaining agreement be unable or unwilling to supply them.

4. Secure from his subcontractors Programs of Affirmative Action and other general requirements described above as applying to the contractor. No subcontractor shall be given an order to proceed until his Program of Affirmative Action is received and approved by the Director of the Office of Equal Opportunity.

D. Sanctions and Remedies

It is agreed that if the contractor does not comply with equal opportunity provisions herein stated, as solely determined by the Board of Education, the contractor's contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Board of Education contracts and/or subject to such other sanctions as may be imposed and remedies invoked by the Board of Education in its discretion.

Contractors shall be responsible for the compliance of their subcontractors. Failure of its subcontractor to comply with the provisions hereof or with non-discriminatory contractual provisions, shall be grounds for the imposition of sanctions and remedies against a contractor. Such sanctions and remedies include the authority of the Office of Equal Opportunity to halt schedules payments to contractors who fail to comply with the provisions hereof.

E. For information concerning the Board of Education's policy or questions pertaining to Equal Employment Opportunity, bidders may consult with the Office of Equal Opportunity of the Board of Education.

APPENDIX 4

LETTER FROM CONTRACT COMPLIANCE OFFICER
TO ACTING SUPERINTENDENT OF SCHOOLS,
NATHAN BROWN, DATED SEPTEMBER 10, 1969

September 10, 1969

Dr. Nathan Brown
Acting Superintendent of Schools
110 Livingston Street
Brooklyn, New York 11201

Dear Dr. Brown:

First, I would like to congratulate you most sincerely on your recent appointment as Acting Superintendent of Schools.

As you know, I am responsible for administering the Board's policy which requires equal employment opportunity practices from all contractors with whom it does business. In this initial stage my office is primarily concerned with contractors who are involved in the construction and maintenance of our city's schools.

Recently the subject of bias in the construction industry has made nationwide headlines. I would like to relate to you some current illustrations of unrest in the construction industry.

The U.S. Department of Labor issued an order requiring specific goals for hiring minority group members in federal finance construction jobs in Philadelphia. In Pittsburgh, Chicago and Buffalo, construction on public assisted projects were halted because of massive demonstrations by minority groups seeking more jobs in the construction industry. Recently, the NAACP announced that it will take legal action to stop work on government financed construction sites throughout the country, unless qualified minorities were employed on the projects. In New York City, James Haughton, Director of the Harlem Unemployment Center, an organization dedicated to placing Black and Puerto Rican workers in the construction industry, has publicly accused the Board of Education and other city agencies of abetting and supporting discriminatory practices by contractors and unions. Mr. Haughton also stated that his organization is considering citywide demonstrations to stop all municipal construction in New York City.

In an attempt to avoid the same kinds of unrest in the construction industry with regard to Board of Education school sites, it is imperative that our Program function in an affirmative, progressive, and meaningful manner. The Program can only function in the manner described, if it is given the full support of the Members of the Board, the Superintendent of Schools, and all other Board of Education personnel whose function relates in any manner to the Office of Contract Compliance.

I regretfully submit that after six (6) months in office and considerable discussions with various Board of Education personnel, I found that very few persons were cognizant of the establishment of the Office of Contract Compliance, and little understanding of the function of such office was had by the few persons that were aware.

As of this date my office has not yet been budgeted; we have been unable to acquire the necessary staff to adequately carry out our responsibilities; and to my knowledge, no direct line of responsibility for this office has been firmly established within the school system.

Dr. Donovan had begun to address himself to the above matters before he left, and it is for the same reasons that I respectfully request the opportunity to meet with you at your earliest convenience to discuss the operation, the needs and direction of this extremely important program of contract compliance.

Sincerely yours,

Richard H. Smith
Contract Compliance Officer

RHS:go

APPENDIX 5

LETTER FROM CHANCELLOR HARVEY SCRIBNER
TO
CONTRACT COMPLIANCE OFFICER
DATED SEPTEMBER 29, 1970

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN, N.Y. 11201

HARVEY B. SCRIBNER
CHANCELLOR

September 29, 1970

Mr. Richard H. Smith
Contract Compliance Officer
Office of School Buildings
28-11 Bridge Plaza North
Long Island City, N.Y. 11101

Dear Mr. Smith:

Thank you for sending me a copy of your report on the ethnic composition of construction workers.

May I suggest that you recommend a plan for implementation of on-the-job training. After its receipt, we should plan a meeting to discuss it.

Sincerely,

Harvey B. Scribner

HARVEY B. SCRIBNER
Chancellor

S:j

APPENDIX 6

SPECIAL CIRCULAR NO. 105, 1972-73
ESTABLISHING
OFFICE OF EQUAL OPPORTUNITY

Special Circular No. 105, 1972-1973

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF THE CHANCELLOR

March 29, 1973

TO: COMMUNITY SCHOOL BOARD CHAIRMEN, ALL SUPERINTENDENTS, EXECUTIVE DIRECTORS, DIRECTORS, HEADS OF BUREAUS AND PRINCIPALS OF ALL DAY SCHOOLS

Ladies and Gentlemen:

OFFICE OF EQUAL OPPORTUNITY

Effective this date, the Office of Contract Compliance is redesignated as the Office of Equal Opportunity.

The office will continue to perform the function of assuring contract compliance in the areas of construction, architectural, engineering, supply and vendor contracts.

In addition, the Office of Equal Opportunity will monitor the employment and personnel practices of the City School District, and make recommendations to the Chancellor in keeping with the objective of equal opportunity.

Mr. Richard H. Smith's current responsibilities will be broadened to administer the Office of Equal Opportunity.

Very truly yours,

HARVEY B. SCRIBNER
Chancellor

APPENDIX 7

LETTER FROM DIRECTOR, OFFICE OF EQUAL OPPORTUNITY
TO
CHANCELLOR IRVING ANKER
DATED OCTOBER 23, 1973

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF THE CHANCELLOR
110 LIVINGSTON STREET
BROOKLYN, N. Y. 11201
TEL. 596-5736

RICHARD H. SMITH
CONTRACT COMPLIANCE OFFICER

October 23, 1973

Mr. Irving Anker, Chancellor
Board of Education
110 Livingston Street
Brooklyn, New York 11201

Dear Mr. Anker:

In accordance with the responsibilities of my office as specified in special circular No. 105, 1972-73, issued March 29, 1973, I am listing below what I consider to be among my immediate responsibilities. As indicated, I have already begun some of the activities; others will require additional staff.

1. Analysis of Central Headquarters Complex Personnel

I have requested that the Division of Personnel furnish me with all current available statistics regarding personnel of central headquarters complex. After receiving such data I will undertake a detailed analysis of the employment patterns and practices of the central headquarters complex with regard to the recruitment, employment, assignment and promotion of minorities and women, with a view toward assuring that the Board of Education is in compliance with Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, as well as appropriate state and city law.

2. Directive from the Chancellor to Staff

I am in the process of preparing a directive from you to all staff explaining the function of the Office of Equal Opportunity, the obligations of and commitment to equal employment opportunity by the Board of Education.

3. Meeting with Executive Directors and Unit Heads

After your directive is issued, I will meet with Executive Directors and other appropriate unit heads to further discuss the purpose and objectives of the Office.

4. Establishment of a Complaint Unit

Pending the assignment of adequate staff, I will establish a unit within the office responsible for attempting to resolve problems arising out of allegations of discrimination regarding equal employment opportunity.

5. Review Job Performance

Begin a review, in cooperation with the Division of Personnel, of job performance in the Board of Education. Such job review will be directed toward identifying those who should be given the opportunity for promotion. This would include providing counseling to such employees on promotional opportunities and encouraging minority and women employees to participate in promotional examinations where necessary.

6. Review Recruitment Efforts

Review and improve recruitment efforts outside of city service, to interest minorities and women in employment in the Board of Education. This is particularly practical for professional and administrative jobs with exempt and non-competitive titles.

In carrying out the responsibilities listed above, particular attention will be given to the recruitment, employment, assignment and promotion of members of the Puerto Rican community. I make special mention of this matter in view of the fact that the annual census of school population for the 1972-73 year indicates that 265,923 students or 23.0% of the total school population consists of Puerto Rican students. Our most recent statistics of the total percentage of Puerto Rican employees in all job categories indicate approximately 6%. Obviously the figure is considerably less in the professional categories (approximately 2%).

Attahced is a proposal outlining a potential design for this office. I would like to confer further with you on these plans at your earliest convenience.

Sincerely yours,

RHS:gc
Att.
cc: Bernard R. Gifford
Frank C. Arricale

RICHARD H. SMITH
Director
Office of Equal Opportunity

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